Allen Owen, Mayor Eunice Reiter, Mayor Pro Tem Jerry Wyatt, Councilmember Barbara Gibson, Councilmember



Buddy Jimerson, Councilmember Brett Kolaja, Councilmember Cynthia Gary, Councilmember Caroline Kelley, City Attorney Frank Simpson, City Manager Patrice Fogarty, City Secretary

CITY COUNCIL MEETING AGENDA

Notice is hereby given of a meeting of the City Council of Missouri City to be held on **Monday**, **April 20**, **2009**, at **7:00 p.m.** at: **City Hall**, **Council Chambers**, **2**nd **Floor**, 1522 Texas Parkway, Missouri City, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

- 1. ROLL CALL
- **2. PLEDGE OF ALLEGIANCE** The *Pledge of Allegiance* will be led by the Missouri City Fire Department Honor Guard.
- 3. PRESENTATIONS AND RECOGNITIONS
 - (a) Proclaim the month of April as "National Sexual Assault Awareness Month" in Missouri City, Texas.
 - (b) Proclaim the week of April 26 May 2, 2009 as "National Crime Victims' Rights Week" in Missouri City, Texas.
 - (c) Proclaim the week of May 3 May 9, 2009 as "National Arson Awareness Week" in Missouri City, Texas.
 - (d) Update on the City's water rescue and dive team efforts.
 - (e) Final report by Insurance Services Office, Inc., (ISO), on Building Code Effectiveness Grading Classification for Missouri City.
- 4. CONSENT AGENDA All consent agenda items listed are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event, the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda. Information concerning consent agenda items is available for public review.
 - (a) Consider approving the **minutes** of the **special** and **regular** City Council meetings of **April 6, 2009**.
 - (b) Consider authorizing the City Manager to execute an agreement with **Geotest Engineering** for materials testing services for the **construction of the Phase II expansion** of the **Steep Bank/Flat Bank wastewater treatment plant.**
 - (c) Consider authorizing the City Manager to execute a **change order** for the **El Dorado Golf Course reconstruction.**
 - (d) Consider authorizing continuation of agreement for tax collection services with Linebarger Goggan Blair & Sampson, L.L.P.

(e) Consider approval and acceptance of **gift deed** for parkland from **Olympia Estates II Associates Limited** to the City of Missouri City.

5. APPOINTMENTS

(a) Consider authorizing the reappointment of **Director – Position 4** and **Director – Position 5** to the Board of Directors of the **Sienna Plantation Management District.**

6. AUTHORIZATIONS BY COUNCIL

- (a) Consider authorizing the City Manager to execute an agreement with **Kimley-Horn** for design of the State Highway 6 Median and Intersection Improvements.
- **7. PUBLIC COMMENTS** An opportunity for the public to address Council on items/concerns not on this agenda.
- **8. PUBLIC HEARINGS** There are no Public Hearings at this time.

9. PUBLIC HEARINGS AND CONSIDERATION OF ZONING ORDINANCES

(a) Public hearing to receive comments for or against a request by **Brendan McEntee** of **McEntee Engineering and Design, Inc.**, to **amend Ordinance O-08-20** pertaining to PD, Planned Development District #70 to **add an approximate 1.54 acre tract of land** into the overall PD development and to allow for deviations from the City's Zoning Ordinance, including architectural design standards for the outparcel tracts; providing for severability; and to **consider the ordinance on the second and final reading.** The 1.54 acre tract of land is located northeast of the intersection of State Highway 6 and Murphy Rd., west of the new Lowe's building.

10. CONSIDERATION OF ORDINANCES

(a) Consider an ordinance of the City Council of the City of Missouri City, Texas, declaring the candidate for Councilmember District B, Cynthia Lenton-Gary, and the candidate for Councilmember District D, Jon Brett Kolaja, unopposed; declaring Cynthia Lenton-Gary, candidate for Councilmember District B, and Jon Brett Kolaja, candidate for Councilmember District D, elected; cancelling the election for single-member Districts B and D; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and providing for severability; and to consider the ordinance on the second and final reading.

11. CONSIDERATION OF RESOLUTIONS

(a) Consider a resolution of the City of Missouri City, Texas, adopting an **Identity Theft Prevention Program.**

12. RECEIVING OF REPORTS

13. CLOSED EXECUTIVE SESSION

The City Council may go into Executive Session regarding any item posted on the Agenda as authorized by Chapter 551 of the Texas Government Code. Notice is hereby given that the City Council will go into Executive Session in accordance with the following provisions of the Government Code:

Texas Government Code, Section 551.071 – Consultation with attorney to seek or receive legal advice regarding pending or contemplated litigation, a settlement offer, or on a matter which the duty of the attorney to the City under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act: contract with Urban Solutions Associations, LLC, dba USA Partners Sports Alliance.

14.	CONVENE INTO	OPEN SESSION -	Take action,	if necessar	у.
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15. ADJOURN

In compliance with the Americans with Disabilities Act, the City of Missouri City will provide for reasonable accommodations for persons attending City Council meetings. To better serve you requests should be received 24 hours prior to the meetings. Please contact Patrice Fogarty, City Secretary, at 281.403.8685.

CERTIFICATION
I certify that a copy of the April 20, 2009, agenda of items to be considered by the Missouri City Cit Council was posted on the City Hall bulletin board on April 16, 2009, at 4:15 p.m.
Maria Conzalez Deput City Secretary
I certify that the attached notice and agenda of items for consideration by the City Council was removed be me from the City Hall bulletin board on the day of, 2009.

Allen Owen, Mayor Eunice Reiter, Mayor Pro Tem Jerry Wyatt, Councilmember Buddy Jimerson, Councilmember Cynthia Gary, Councilmember



Barbara Gibson, Councilmember Brett Kolaja, Councilmember Frank Simpson, City Manager Caroline Kelley, City Attorney Patrice Fogarty, City Secretary

Notice is hereby given of an addendum to the regular meeting agenda of items coming before the City Council of Missouri City on Monday, April 20, at 7:00 p.m. at: City Hall, Council Chambers, 2nd Floor, 1522 Texas Parkway, Missouri City, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

Item 4 (e) of the agenda for the April 20, 2009, regular City Council meeting is hereby amended as follows:

4. CONSENT AGENDA

(e) Consider approval and acceptance of gift deed for parkland from Olympia Estates II Associates Limited to the City of Missouri City.

Item 4 (f) of the agenda for the April 20, 2009, regular City Council meeting is hereby added as follows:

4. CONSENT AGENDA

(f) Consider approval and ratification of post-closing agreement executed by Olympia Estates II Associates Limited and the City of Missouri City providing for the removal of livestock from such parkland.

CERTIFICATION

I certify that a copy of the April 20, 2009, agenda addendum of items to be considered by the Missouri City
City Council was posted on the City Hall bulletin board on April 17, 2009, at <u>4:30</u> o'clock p.m.
manadis
Yomara Frias, City Secretary Department
I certify that the attached notice and agenda of items to be considered by the City Council was removed by
me from the City Hall bulletin board on the day of, 2009.
Title:



Council Agenda Item April 20, 2009

- 1. ROLL CALL
- **2. PLEDGE OF ALLEGIANCE** The *Pledge of Allegiance* will be led by the Missouri City Fire Department Honor Guard.

3. PRESENTATIONS AND RECOGNITIONS

- (a) Proclaim the month of April as "National Sexual Assault Awareness Month" in Missouri City, Texas.
- (b) Proclaim the week of April 26 May 2, 2009 as "National Crime Victims' Rights Week" in Missouri City, Texas.
- (c) Proclaim the week of May 3 May 9, 2009 as "**National Arson Awareness Week**" in Missouri City, Texas.
- (d) Update on the City's water rescue and dive team efforts.
- (e) Final report by Insurance Services Office, Inc., (ISO), on Building Code Effectiveness Grading Classification for Missouri City.



Council Agenda Item April 20, 2009

4. CONSENT AGENDA

(a) Consider approving the **minutes** of the **special** and **regular** City Council meetings of **April 6, 2009**.

Background information attached as follows:

Special meeting minutes of April 6, 2009

Regular meeting minutes of April 6, 2009

Allen Owen, Mayor Eunice Reiter, Mayor Pro Tem Jerry Wyatt, Councilmember Barbara Gibson, Councilmember



Buddy Jimerson, Councilmember Brett Kolaja, Councilmember Cynthia Gary, Councilmember Caroline Kelley, City Attorney Frank Simpson, City Manager Patrice Fogarty, City Secretary

CITY COUNCIL SPECIAL MEETING MINUTES

City Council of the City of Missouri City, Texas, met in special session **Monday, April 6, 2009,** at **6:30 p.m.** at City Hall, Second Floor (Behind Council Chambers), 1522 Texas Parkway, Missouri City, Texas, to consider the following:

1. CALL TO ORDER

Mayor Owen called the meeting to order at 6:39 p.m.

Those also present: Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Kolaja, Gary, and Gibson; City Manager Simpson, City Attorney Kelley and City Secretary Fogarty. Assistant City Manager Atkinson, First Assistant City Attorney Smith, Director of Public Works/City Engineer Elmer, Assistant Director of Public Works Valiante, and Media Relations Manager Faber.

2. DISCUSSION/POSSIBLE ACTION

(a) Texas State Legislative Session update.

Mayor Owen discussed HOAs and legislation. City Manager Simpson stated that they are trying to reduce the power HOAs currently have. City Manager Simpson added that Texas Legislature is advocating to control local sprinkler systems. Simpson stated that Sienna is trying to expand their district with a parking garage; also that Sienna MUDS 4, 5, 6, and 7 do not have road powers and have filed bills to obtain road power. The City of Stafford has filed a bill in regards to losing money from local businesses. Simpson then turned the floor to Councilmember Reiter so she could discuss the current HGAC bill proposals in regards to excluding Galveston and Brazoria Counties. Director Reiter stated that Mario Gallegos attended an HGAC meeting to protest an action whereby the State cut finding in his district. Gallegos was furious and threaten with retribution, which is now doing by trying to destroy HGAC. Director Reiter added that Mr. Gallegos started a bill divorcing Houston from HGAC and has started yet another bill divorcing Brazoria County. City Secretaries will be giving testimony regarding a bill on run-off elections. City Secretary Fogarty stated that the legislators are trying to change the election date from May to November. Timing is not the issue according to City Secretary Fogarty, who stated she is afraid the City's items would be "lost" on a long ballot, because they would be placed towards the end. City Manager Simpson commented that in regards to the Enterprise Fund, the letter was signed by the Governor and Lieutenant Governor.

(b) Staff update on City Budget Development for Fiscal Year ending 2010.

City Manager Simpson stated that according to the Director of Finance Vela, the City is at a 2-3 percent increase in total value. Sales tax on the current budget is growing, but revenues are still relatively flat. Vela estimates the City might only be \$400,000 over for this upcoming budget. City Manager Simpson recommended an average of 3 percent impact on budget. During the first meeting of May, the preliminary budget will be presented. Mayor Owen inquired if the City has received any refunds from FEMA. City Manager Simpson stated not yet, but that proper documentation has been filed.

3. ADJOURNMENT

The meeting	adjourned	at 6:59	p.m.
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Allen Owen, Mayor Eunice Reiter, Mayor Pro Tem Jerry Wyatt, Councilmember Barbara Gibson, Councilmember



Buddy Jimerson, Councilmember Brett Kolaja, Councilmember Cynthia Gary, Councilmember Caroline Kelley, City Attorney Frank Simpson, City Manager Patrice Fogarty, City Secretary

CITY COUNCIL MEETING MINUTES

City Council of the City of Missouri City, Texas, met in regular session **Monday, April 6, 2009**, at the City Hall Council Chambers, Second Floor, 1522 Texas Parkway, Missouri City, Texas, at **7:00 p.m**. to consider the following:

1. ROLL CALL

Mayor Owen called the meeting to order at 7:12 p.m.

Those also present: Mayor Pro Tem Reiter, Councilmembers Wyatt, Jimerson, Gary, Gibson, and Kolaja; City Manager Simpson, City Attorney Kelley, and City Secretary Fogarty.

2. PLEDGE OF ALLEGIANCE

Hightower High School posted the colors and led the *Pledge of Allegiance*.

3. PRESENTATIONS AND RECOGNITIONS

Mayor Owen proclaimed April 2009 as "Child Abuse Prevention Month." The proclamation was accepted by Mr. Ron Booker. Mayor Owen proclaimed the week of April 12-18, 2009, as "National Public Safety Telecommunications Week" in Missouri City. City Manager Simpson introduced Joel Fitzgerald, the City's recently hired police chief. Mayor Owen acknowledged the Finance Department's *Distinguished Budget Presentation Award* received from the Government Finance Officers' Association for the 21st consecutive year. Budget Manager Cynthia Conley received the award on behalf of the Finance Department. Assistant City Manager Bill Atkinson discussed the City's Code Enforcement Program and revealed six City violations Council considers as needing increased enforcement efforts. Beginning in mid-May 2009, violators found committing those violations will be issued a citation to court without prior notification through a warning letter. The City will mount a communications campaign prior to that time by way of utilizing several communication outlets such as MCTV Channel 16, print and electronic media, and HOA communications. The violations are as follows: high grass/weeds, junked and abandoned vehicles, vehicles parked on grass, storm damaged structures and downed fences, accumulation of garbage/trash and rubbish (including timely removal of emptied garbage cans and garbage cans left in view from the street), and pools which are not properly maintained.

4. CONSENT AGENDA

- (a) Consider approving the **minutes** of the **special** and **regular** City Council meeting of **March 16, 2009** and the **special** City Council meeting of **March 30, 2009**.
- (b) Consider authorizing Staff to purchase **sign material**.
- (c) Consider awarding a term contract for fireworks display services.
- (d) Consider authorizing purchase of a tilt trailer through HGAC cooperative purchasing contract.
- (e) Consider authorizing an agreement with **Earth Engineering**, **Inc.**, for materials testing services for the **Turtle Creek Project**.
- (f) Consider approving **change order** to the **professional services agreement** with **Aguirre & Fields**, **LP.**, to include construction management services for the **Turtle Creek Drive Project**.
- (g) Consider ratifying an interlocal agreement with the Quail Valley Utility District to plug and cap a nonfunctioning water well on the Quail Valley Golf Course.

Councilmember Jimerson moved to approve the Consent Agenda pursuant to recommendations by Staff. Councilmember Wyatt seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

Agenda item 4(b) is to authorize the purchase of **sign material** manufactured from **3M Company** in the amount of \$31,467.75.

Agenda item 4(c) is to award a three-year contract to **A.M. Pyrothech** for **fireworks display services** for a unit price of \$14,900.00 per year.

Agenda item 4(d) is to authorize the purchase of a tilt trailer from **Rush Equipment Center** through HGAC cooperative contract for the amount of \$28,950.00.

Agenda item 4(e) is to execute an agreement with **Earth Engineering**, **Inc.**, for materials testing services on **Turtle Creek Drive Project** in the amount of \$35,794.00.

Agenda item 4(f) is to execute a change order for design services with **Aguirre & Fields, LP** for construction phasing services on the **Turtle Creek Drive Project** in the amount not to exceed **\$43,000.00**.

Agenda item 4(g) is to execute an agreement with Quail Valley Utility District regarding a nonfunctioning Water Well in the Quail Valley Golf Course for an amount not to exceed \$28,507.50.

5. APPOINTMENTS

There were no Appointments at this time.

6. AUTHORIZATIONS BY COUNCIL

(a) Consider awarding a contract for the Phase II expansion of the Steepbank/Flatbank Wastewater Treatment Plant.

Councilmember Kolaja stepped away from the City Council meeting at 7:38 p.m.

Director of Public Works/City Engineer Elmer stated the construction of the Steepbank/Flatbank Wastewater Treatment Plant is necessary due to growing demand on the wastewater treatment system. After reviewing the bids submitted, Staff recommended the contract be awarded to the lowest responsible bidder, Industrial TX Corp., with a total bid amount of \$5,230,040.00.

Councilmember Gary moved to award a contract for the **Phase II expansion** of the **Steepbank/Flatbank Wastewater Treatment Plant** to **Industrial TX Corp.** Councilmember Gibson seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary and Gibson

Noes: None

Absent: Councilmember Kolaja

Councilmember Kolaja returned to the City Council meeting at 7:40 p.m.

(b) Consider authorizing the City Manager to negotiate and execute an **engineering services agreement** for design of **intelligent traffic systems (ITS).**

Director of Public Works/City Engineer Elmer stated an intelligent transportation system (ITS) is necessary for enabling City-wide sequencing and control of all City signals. Upon evaluation, Walter P. Moore and Associates was determined to be the most qualified firm by the Consultant Selection Committee, based on Staff's recommendation, for an amount not to exceed \$335,706.00. The firm will be responsible for the following: preliminary design, design development, engineering design, surveying, geotechnical report, bid specifications, final design and construction phase engineering.

Mayor Pro Tem Reiter moved to authorize the City Manager to negotiate and execute an **engineering services agreement** for design of **intelligent traffic systems (ITS).** Councilmember Gary seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

(c) Consider declaring default by Ainbinder Company in the Economic Development Grant Agreement dated May 15, 2006.

First Assistant City Attorney Smith stated Ainbinder Company has requested agenda item 6c be deferred at this time in order to fully develop a presentation for City Council.

Councilmember Wyatt moved to postpone the default by **Ainbinder Company** in the **Economic Development Grant Agreement dated May 15, 2006.** Councilmember Gibson seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

7. PUBLIC COMMENTS

Mayor Owen noted the following comments to any and all citizens who wish to address Council during public comments. "Citizens who wish to address the City Council about items on the agenda which are scheduled for Council action will have **five minutes** to express their positions. State Law prohibits the Mayor and the members of the Council from commenting on any statement or engaging in dialogue without an appropriate agenda item being posted in accordance with the Texas Open Meetings Law. Comments should be directed to the entire Council, not individual members. Engaging in verbal attacks or comments intended to insult, abuse, malign, or slander any individual shall be cause for termination of speaking privileges and expulsion from Council Chambers."

Bill G. Tompkins, 3510 Plum Brook Ln., Missouri City, Thunderbird West Subdivision, expressed his increased concerns regarding incoming traffic on Hampton Drive for the Lowe's property.

8. PUBLIC HEARINGS

(a) A public hearing to receive comments for or against the **Missouri City Police Department's** application for a Justice Assistance Grant from the **Department of Justice** to fund the purchase of Tasers, equipment and training.

The public hearing opened at 7:48 p.m. Captain Bothell stated the Missouri City Police Department wishes to seek grant funding from the Department of Justice (DOJ). The DOJ has allocated \$77,159.30 to Missouri City for law enforcement purpose. The Missouri City Police Department currently has no tasers and is seeking funding for 84 handheld tasers, replacement cartridges, training cartridges, replacement batteries, USB download kits and the associated training. With no further comments, the public hearing closed at 7:51 p.m.

Councilmember Gibson moved to close the public hearing regarding the **Missouri City Police Department's** application for a Justice Assistance Grant from the **Department of Justice** to fund the purchase of Tasers, equipment and training. Councilmember Gary seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

Mayor Pro Tem Reiter moved to suspend the rules and take agenda item 11b out of order. Councilmember Kolaja seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

See agenda item 11b for action taken.

9. PUBLIC HEARINGS AND CONSIDERATION OF ZONING ORDINANCES

Public hearing to receive comments for or against a request by Brendan McEntee of McEntee Engineering and Design, Inc., to amend Ordinance O-08-20 pertaining to PD, Planned Development District #70 to add an approximate 1.54 acre tract of land into the overall PD development and to allow for deviations from the City's Zoning Ordinance, including architectural design standards for the outparcel tracts; providing for severability; and to **consider the ordinance on the first of two readings**. The 1.54 acre tract of land is located northeast of the intersection of State Highway 6 and Murphy Rd., west of the new Lowe's building.

The public hearing opened at 7:52 p.m. Director of Public Works/City Engineer Elmer presented. Councilmember Kolaja indicated the Director of Public Works could coordinate with the City's Police Department in order to reduce the incoming traffic on Ridgeview Dr. and West Creek. With no further comments, the public hearing closed at 8:00 p.m.

Councilmember Wyatt moved to approve the request by **Brendan McEntee** of **McEntee Engineering and Design**, **Inc.**, to amend Ordinance O-08-20 pertaining to PD, Planned Development District #70 to add an approximate 1.54-acre-tract of land into the overall PD development and to allow for deviations from the City's Zoning Ordinance **on the first of two readings.** Mayor Pro Tem Reiter seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

10. CONSIDERATION OF ORDINANCES

(a) Consider an ordinance of the City Council of the City of Missouri City, Texas, declaring the candidate for Councilmember District B, Cynthia Lenton-Gary, and the candidate for Councilmember District D, Jon Brett Kolaja, unopposed; declaring Cynthia Lenton-Gary, candidate for Councilmember District B, and Jon Brett Kolaja, candidate for Councilmember District D, elected; cancelling the election for single-member Districts B and D; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and providing for severability; and to consider the ordinance on the first of two readings.

Councilmember Wyatt moved to declare the candidate for Councilmember District B, Cynthia Lenton-Gary, and the candidate for Councilmember District D, Jon Brett Kolaja, unopposed; declare Cynthia Lenton-Gary, candidate for Councilmember District B, and Jon Brett Kolaja, candidate for Councilmember District D, elected; cancel the election for single-member Districts B and D; and consider the ordinance on the first of two readings. Mayor Pro Tem Reiter seconded. MOTION PASSED.

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

11. CONSIDERATION OF RESOLUTIONS

(a) Consider a resolution of the City of Missouri City, Texas, approving the submission of the Community Oriented Policing Services Hiring Recovery Program Grant application to the Department of Justice to fund the hiring of additional police officers; designating Larry Capps, Police Captain, as the authorized representative of the City for submitting such application; and containing other provisions related thereto.

Councilmember Gibson moved to approve submission of the **Community Oriented Policing Services Hiring Recovery Program Grant** application to the Department of Justice to fund the hiring of additional police officers; and designate **Larry Capps, Police Captain,** as the authorized representative of the City for submitting such application. Councilmember Kolaja seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

(b) Consider a resolution of the City of Missouri City, Texas, approving the submission of the **Edward Byrne Memorial Justice Assistance Grant** application to the Department of Justice to fund the purchase of Tasers and related equipment and training; designating **Lance Bothell, Police Captain,** as the authorized representative of the city for submitting such application; and containing other provisions related thereto.

Councilmember Gibson moved to approve the submission of the **Edward Byrne Memorial Justice Assistance Grant** application to the Department of Justice to fund the purchase of Tasers and related equipment and training; designate **Lance Bothell, Police Captain,** as the authorized representative of the City for submitting such application. Mayor Pro Tem Reiter seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Mayor Pro Tem Reiter, Councilmembers Wyatt,

Jimerson, Gary, Gibson and Kolaja

Noes: None

12. RECEIVING OF REPORTS

City Manager Simpson congratulated Police Lieutenant Mike Berezin for his completion of the FBI National Academy. He also stated the City's employee turnover rate is down from last year.

13. CLOSED EXECUTIVE SESSION

At 8:03 p.m., Council convened in closed executive session pursuant to chapter 551 of the Texas Government Code, for one or more of the following reasons:

Texas Government Code, Section 551.072 -- Deliberation regarding the purchase, exchange, lease or value of real property: property within the Quail Valley Subdivision: golf course.

Texas Government Code, Section 551.072 -- Deliberation regarding the purchase, exchange, lease or value of real property: property within the Quail Valley Subdivision: tennis center.

Texas Government Code, Section 551.087 -- Deliberations regarding commercial or financial information that the governmental body received from a business prospect that the governmental body seeks to locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negations: manufacturing prospect update.

14. RECONVENE INTO OPEN SESSION

Council reconvened into open session at 9:18 p.m. Councilmember Wyatt moved to authorize the City to enter negotiations for the purchase of the tennis center on Cypress Point. Councilmember Gary seconded. **MOTION PASSED.**

Ayes: Mayor Owen, Councilmembers Wyatt, Jimerson, Gary, Gibson and

Kolaja

Noes: Mayor Pro Tem Reiter

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The meeting adjourned at 9:18 p.m.

Patrice Fogarty, City Secretary



Council Agenda Item April 20, 2009

4. CONSENT AGENDA

(b) Consider authorizing the City Manager to execute an agreement with **Geotest Engineering** for materials testing services for the **construction of the Phase II expansion** of the **Steep Bank/Flat Bank wastewater treatment plant.**

Background information attached as follows:

Cover Memo

Professional Service Agreement



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 4b Consider authorizing the City Manager to execute an agreement with Geotest

Engineering for materials testing services for the construction of the Phase II

expansion of the Steep Bank/ Flat Bank wastewater treatment plant.

Submitted by: Charles Oberrender, CPPB, Purchasing Manager

Scott R. Elmer, Public Works Director

SYNOPSIS

The construction of the Steepbank/Flatbank Wastewater Treatment Plant Phase II expansion will require material testing services. Staff requests consideration of an agreement with Geotest Engineering, Inc. for materials testing services. The agreement amount is over \$25,000 and therefore requires action by Council.

BACKGROUND

Geotest Engineering, Inc. is a consulting firm that provides geotechnical engineering, environmental engineering, construction materials engineering and construction management. Geotest has worked successfully with the City on several projects and is currently working with the City on its sidewalk replacement program. They also provided materials testing for the Mustang Bayou Regional Water Plant as well as Mustang Bayou Water Lines Phase I.

The total construction time is estimated to be a year and half and this contract term would extend through construction completion and final acceptance. The terms and conditions of the contract are per the City's standard professional services agreement. The estimated fee for services is \$35,142.00.

FISCAL ANALYSIS

FY09 Funds	Funding Source	Account Number	Project Number	Expenditure
Budgeted				Requested
\$5,788,000.00	CO	410-0897-688.10-01	WWTP#2	\$35,142.00

STAFF'S RECOMMENDATION

Authorize the City Manager to execute an agreement with Geotest Engineering for materials testing services for an amount not to exceed \$35,142.00.

Bill Atkinson

Assistant City Manager

PO#
Total Maximum Contract: \$

AGREEMENT FOR

Materials Testing Services for Phase II Expansion of Steep Bank/Flat Bank Wastewater Treatment Plant

Contract # 257-09

STATE OF TEXAS §

COUNTY OF FORT BEND §

THIS AGREEMENT MADE, entered into and executed by and between the CITY OF MISSOURI CITY, a body corporate and politic under the laws of the State of Texas, hereinafter called "CITY", and

GEOTEST ENGINEERING, INC.

hereinafter called "CONTRACTOR".

WHEREAS, the CONTRACTOR represents that it is fully capable of making and qualified to provide assistance to the CITY and CONTRACTOR desires to perform the same;

NOW, THEREFORE, the CITY and the CONTRACTOR, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION I SCOPE OF AGREEMENT

The CONTRACTOR agrees to provide the services as defined in Exhibit "A" attached hereto and made a part hereof, and for having provided said services, the CITY agrees to pay the CONTRACTOR compensation as stated in the sections to follow. This Agreement takes precedence over all attachments in the event of conflicting terms and conditions.

SECTION II CHARACTER AND EXTENT OF WORK

The CONTRACTOR shall provide the services as defined in defined in Exhibit "A" attached hereto. The CITY shall be under no obligation to pay for services rendered without prior authorization.

SECTION III TIME FOR PERFORMANCE

The time for performance will be for approximately 545 days starting with the commencement of construction through final acceptance of the project by the City. Upon written request of the CONTRACTOR, the CITY may grant time extensions to the extent of any delays caused by the CITY or other agencies with which the work must be coordinated and over which the CONTRACTOR has no control.

SECTION IV COMPLIANCE AND STANDARDS

CONTRACTOR agrees to provide services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the CONTRACTOR's trade or profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the services provided hereunder and CONTRACTOR's performance. CONTRACTOR shall and does hereby agree to indemnify and hold harmless the CITY, its officers, agents, and employees from any and all damages, loss or liability of any kind, whatsoever, by reason of death or injury to property or third persons caused by the intentional, knowing, reckless, or negligent act or omission (hereinafter referred to as "fault") of CONTRACTOR, its officers, agents, employees, invitees or other persons for whom it is legally liable, with regard to the performance of this Agreement, and CONTRACTOR will, at its cost and expense, defend, pay on behalf of, and protect the CITY and its officers, agents, and employees against any and all such claims and demands. Such indemnity shall apply where the suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney fees arise in whole or in part from the fault of CONTRACTOR.

Force Majeure. Neither CONTRACTOR, its suppliers nor CITY will be liable for any failure or delay in this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the negligence or willful misconduct of CONTRACTOR), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If CONTRACTOR is unable to provide services for a period of ten (10) consecutive days as a result of a continuing force majeure event, CITY may cancel the services order without penalty.

SECTION V THE CONTRACTOR'S COMPENSATION

For and in consideration of the services rendered by the CONTRACTOR pursuant to this Agreement, the CITY shall pay the CONTRACTOR the unit rates as described on the attached Exhibit "A" which shall be considered as the total basic fee. The limit of appropriation is addressed in Section IX.

SECTION VI TIME OF PAYMENT

Payment by the CITY to the CONTRACTOR shall be made as follows:

Upon completion, CONTRACTOR shall submit to the Purchasing Manager, an invoice in a form acceptable to the CITY, setting forth the charges for the services provided which were delivered during such billing period, and the compensation which is due for same. The CITY contract manager shall review the same and approve it with such modifications, as deemed appropriate. The CITY shall pay each invoice as approved by the CITY contract manager within thirty (30) days after receipt of a true and correct invoice by the CITY. The approval or payment of any such invoice shall not be considered to be evidence of performance by the CONTRACTOR to the point indicated by such invoice or of the receipt of or acceptance by the CITY of the services covered by such invoice.

SECTION VII TERMINATION

The CITY may terminate this Agreement at any time by giving thirty (30) days written notice to the CONTRACTOR. The CONTRACTOR may terminate this Agreement upon thirty (30) days' notice in writing in the event the CITY has failed to pay the CONTRACTOR'S invoices. If the CONTRACTOR has been providing services in accordance with this agreement, the CITY shall pay the CONTRACTOR all amounts due up to time of termination.

SECTION VIII ADDRESS AND NOTICES AND COMMUNICATIONS

The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to the other by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, (iv) by sending the same by telefax with confirming copy sent by mail, or (v) by sending the same by electronic mail with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed by providing written notice in accordance hereunder, shall be as follows:

All notices and communications under this Agreement shall be mailed to the CONTRACTOR at the following address:

Geotest Engineering, Inc. Attn: Ravi Raj Yanamandala, P.E. 5600 Bintliff Drive Houston, TX 77036 713-266-0588 713-266-2977Fax ravi@geotesteng.com

All notices and communications under this Agreement shall be mailed to the CITY at the following address:

City of Missouri City
Attn: Charles Oberrender
1522 Texas Parkway
Missouri City, Texas 77489
281-403-8612
281-208-5539F
coberrender@missouricitytx.gov

SECTION IX LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, CONTRACTOR has been advised by the CITY and CONTRACTOR clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the CITY shall have available \$35,142.00 to discharge any and all liabilities which may be incurred by the CITY pursuant to this Agreement and that the total maximum compensation that CONTRACTOR may become entitled to hereunder and the total maximum sum that the CITY shall become liable to pay to CONTRACTOR hereunder shall not under any conditions, circumstances, or interpretations, hereof, exceed the said total maximum sum provided for in this section without prior written permission from the CITY.

SECTION X SUCCESSORS AND ASSIGNS

The CITY and the CONTRACTOR bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the CITY nor the CONTRACTOR shall assign, sublet or transfer its or his interest in this Agreement without the written consent of the other, which consent will not be unreasonably withheld. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

SECTION XI MEDIA

Contact with the news media shall be the sole responsibility of the CITY. CONTRACTOR shall under no circumstances release any material or information developed in the performance of its work hereunder without the express written permission of the CITY.

SECTION XII AUTHORITY OF CITY PROJECT MANAGER

All work to be performed by the CONTRACTOR hereunder shall be performed to the satisfaction of the CITY project manager. The CITY project manager shall decide any and all questions, which may arise as to the quality, or acceptability of the work performed by the CONTRACTOR and the decisions of the CITY project manager in such cases shall be final and binding on both parties. However, nothing contained herein shall be construed to authorize the CITY project manager to alter, vary or amend this Agreement.

SECTION XIII INSURANCE REQUIREMENTS

A current certificate of insurance is required to be submitted to the Purchasing Office before the CITY will enter into a contract with a vendor. The certificate of insurance shall be an attachment to this Agreement as Exhibit "B". In addition, the CITY shall not enter into any separate indemnification or hold harmless agreements with the successful CONTRACTOR(s).

POLICY REQUIREMENTS

Prior to the approval of this contract by the CITY, CONTRACTOR shall furnish a completed insurance certificate to the Purchasing Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY, and no officer or employee of the CITY shall have authority to waive this requirement.

<u>INSURANCE COVERAGE REQUIRED</u>

The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by CITY based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONTRACTOR.

TYPE& AMOUNT

1. Commercial General (public)Liability insurance minimum limits of \$1,000,000 each occurrence including coverage for the following:

- a. Independent contractors
- b. Products/completed operations
- c. Personal injury
- d. Advertising injury
- e. Contractual liability
- f. Medical payments

ADDITIONAL POLICY ENDORSEMENTS

CITY shall be entitled, upon request, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

CONTRACTOR agrees with the respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Missouri City as certificate holder;
- b. Provide for immediate notice to City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the CITY at the address shown below by first class mail;
- d. CONTRACTOR agrees to waive subrogation against the City of Missouri City, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this Agreement concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

CONTRACTOR shall notify CITY in the event of any change in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to CITY at the following address:

City of Missouri City Purchasing Manager Attn: Charles Oberrender 1522 Texas Parkway Missouri City, Texas 77489 (281) 403-8612

Approval, disapproval, or failure to act by CITY regarding any insurance supplied by CONTRACTOR shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in this Agreement. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate CONTRACTOR from liability.

SECTION XIV MODIFICATIONS

This instrument, including Exhibit "A" and Exhibit "B" contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XV FISCAL FUNDING

The CITY'S fiscal year is July 1 through June 30.

If this contract extends beyond June 30th, there shall be a fiscal funding out. If, for any reason, funds are not appropriated to continue the contract in the new fiscal year, said contract shall become null and void on the last day of the current appropriation of funds. Contract will then be terminated without penalty of any kind or form to the CITY.

SECTION XVI CHOICE OF LAW

This Agreement shall be governed by the laws of the State of Texas with venue in Fort Bend County, Texas and CONTRACTOR hereby consents to such jurisdiction and venue.

SECTION XVII SEVERABILITY

In the event that any provision(s) of this Agreement shall for any reason be held invalid, illegal, or unenforceable, the invalidity, illegality or unenforceability of that provision(s) shall not affect any other provision(s) of this Agreement, and it shall further be construed as if the invalid, illegal, or unenforceable provision(s) had never been a part of this Agreement.

This document and included exhibits is the entire Agreement and recites the full consideration between the parties, their being no other written or parole agreement.

IN WITNESS WHEREOF, said City of Missouri City has lawfully caused these presents to be executed by the City Manager of said CITY and the said CONTRACTOR, acting by its thereunto duly authorized representative, does now sign, execute and deliver this instrument.

Done at the City of Missouri City,	Texas on the day of, 2009.
Prepared by	
Prepared by Charles Oberrender, C	PPB, Purchasing Manager.
C	ITY OF MISSOURI CITY
H. Frank Simpson, City Manager	
Date	
	CONTRACTOR
Signature	Company Name
Printed Name/Title	
Date	



GEOTEST ENGINEERING, INC.

Geotechnical Engineers & Materials Testing

5600 Bintliff Drive

Houston, Texas 77036

Telephone: (713) 266-0588

Fax: (713) 266-2977

Proposal No. 1150-2133-01

Mr. Damon E. Williams The City of Missouri City 1522 Texas Parkway Missouri City, Texas 77489

Re:

Steep Bank/Flat Bank WWTP Phase II

Expansion From 1.5 MGD To 3.0 MGD

Project No. 1555-0701

Dear: Mr. Williams,

Geotest Engineering, Inc. appreciates the opportunity to submit our proposed scope of services and budget estimate to provide materials testing services on the above referenced project. Based on the proposed scope of services, we estimate a budget of \$35,142.00. Any additional services requested and not part of this estimate will be charged in accordance with our standard fee schedule.

Geotest appreciates the opportunity to work with you. If you have any questions or require additional information, please contact me at your convenience.

Sincerely,

GEOTEST ENGINEERING, INC.

Ravi Raj Yanamahdala, P.E. TBPE Registration No. F-410

\la GTHOU01\CMT Proposals\1150-2133-01	
Copies Submitted: 2 Enclosures: Cost Estimate	
ACCEPTED BY:	* ***
PRINTED NAME:	
TITLE:	
DATE:	

GEOTEST ENGINEERING, INC.

5600 Bintliff Drive Houston, Texas 77036 Tel (713) 266-0588

CONSTRUCTION MATERIALS COST ESTIMATE Steep Bank/Flat Bank WWTP Phase II

Expansion From 1.5 To 3.0 MGD

	•		
	Quantity	Unit <u>Rate</u>	<u>Amount</u>
PERSONNEL			
10400 Project Manager 10700 Technician NICET II, ACI C1, HMA-1A, NDT II, Logger 10701 Technician NICET II, ACI C1, HMA-1A, NDT II, Logger OT 11100 Welding Inspector, CWI, ACCP II 15000 Vehicle Charge PORTLAND CEMENT CONCRETE	20 x 280 x 80 x 40 x 420 x	\$76.00 / H \$50.00 / H \$75.00 / H \$78.00 / H \$7.50 / H	$\begin{array}{rcl} & & & & & & \\ & & & & & \\ & & & & \\ & & \\ & & \\ & & & \\ & & \\ & & & \\ & & & \\ & & & \\ & & & \\ & & & \\ & & & \\ & & & \\ & & & \\$
30100 Compressive Str. (Cylinder) (C-39)	100 x	\$15.00 / E	a =\$1,500.00
HMAC			
40500 Extraction/Gradation (Tex - 210F) 40700 HVEEM Stability (Tex - 208F) 40800 Bulk Density - Lab Molded or Core (Tex - 207F) 41000 Molding Specimens (Tex - 206F) 41100 Maximum Theoretical Specific Gravity (Tex - 227F)	4 x x x 4 x x 4 x x x	\$174.00 /Ea \$82.00 Se \$46.00 Se \$54.00 Se \$78.00 /Ea	t = \$328.00 t = \$184.00 t = \$216.00
MASONRY			
60300 Compressive Strength, Mortar or Grout Cyl. (C 780/C 39)	36 x	\$20.00 / Ea	a = <u>\$720.00</u>
SOILS			
90100 Liquid & Plastic Limits (D 4318) 90600 Percent Passing #200 Sieve (D 1140) 92300 OMD Standard Compaction (D 698) 92800 Optimum Lime Content - PI Method	5 x 5 x 4 x 1 x	\$53.00 / Ea \$41.00 / Ea \$175.00 / Ea \$208.00 / Ea	= \$205.00 = \$700.00
TREATED SOILS			
94100 Cement Sand Compressive Str. (D 1633) 94500 OMD Strength Compaction, Treated (D 698) 95100 Nuclear Density Gauge (D 6938)	12 x 2 x 100 x	\$61.00 / Ea \$193.00 / Ea \$9.00 / Hi	= \$386.00
		TOTAL	\$35,142.00



Council Agenda Item April 20, 2009

4. CONSENT AGENDA

Background information attached as follows:

(c) Consider authorizing the City Manager to execute a **change order** for the **El Dorado Golf Course reconstruction.**

Cover Memo
El Dorado Renovation Request for Information – Clay Liner
El Dorado Renovation Request for Information – Cart Path
El Dorado Renovation Request for Information – Wet Well
El Dorado Renovation Request for Information – Storm Sewer Pipe



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 4c Consider authorizing a change order to the contract for the El Dorado

Golf Course reconstruction

Prepared by: Scott R. Elmer, P.E., Director of Public Works

Charles Oberrender, CPPB, Purchasing Manager

Submitted by: Frank Simpson, City Manager

SYNOPSIS

A change order is necessary to amend the existing construction contract to Heritage Links for Reconstruction of El Dorado Golf Course #147-09 to include construction of a lake liner, a wet well and pump station, and a storm sewer relief pipe, to the El Dorado Golf Course reconstruction project. Staff desires to issue change order #2 to amend the contract by the proposed amount. Change orders over \$25,000 require Council approval and may not increase the original contract by more than 25% per Section 252 of the Texas Local Government Code.

BACKGROUND

At the time of construction contract award it was noted that some additional components, which are normally addressed through the submittal process, would be addressed during the course of construction. As best as could be anticipated, costs associated with these components were estimated and included in the project budget. This change order is necessary to add the following components, with costs now identified, to the construction contract: construction of a new pump station and wet well to supply the irrigation system, and the upsizing of the storm sewer relief line between holes #4 and #5.

This change order also will increase the thickness, and thus strength and longevity of the cart path throughout the El Dorado course. Currently, the construction contract includes the installation of 5.1 miles of a 4" cart path, including the cost of concrete and steel rebar. Through this change order, the bid amounts for the cost of concrete and steel rebar will be deducted, allowing the City to provide the concrete with fibermesh instead of rebar, at a considerable cost savings. The fibermesh concrete is available under Missouri City's contract #201-09 previously awarded by Council. The deletion of the concrete with rebar is a deduction of \$225,690. The fibermesh concrete from the City's contract will cost \$201,117 and results in a net savings of \$24,573 for using fibermesh versus regular concrete and rebar. The additional 2 inches of concrete thickness will require approximately \$34,000 to form and install. The net change for the improved cart paths is a deduction of \$191,697.70 to the contract.

The final item included in this change order is the installation of a 12" layer of compacted clay to line and seal the lake on hole #4 to keep it from leaking. This liner was found to be necessary in order to maintain the drainage system on the course.

The changes and associated costs are summarized in the following table:

Component	Description	Expenditure Request
Clay Lake Liner on Hole #4	Seal lake bottom by lining with 12" compacted clay	\$31,764.17
6" Cart Path	Increase thickness of cart path from 4" to 6"	\$ (191,697.70)
Pump Station Foundation and Intake Structure	Install 96" wet well and incorporate existing well as intake structure	Base: \$128,605.80 TBD Costs (not to exceed): \$18,975.00 Total: \$147,580.80
Storm Sewer Relief Line	Install 800 If of 18" pipe between holes #4 & #5 under road crossing	\$54,836
Total Add	\$234,180.97	
Total Deduct		\$ (191,697.70)
Net Change Order #2	\$42,483.27	

Original Contract Amount: \$4,954,236.05 Change Order #1 (120,000.00) Change Order #2 42,483.27 New Contract Amount \$4,876,719.32

FISCAL ANALYSIS

FY09 Funds	Funds Available	Account Number	Project Number	FY09 Funds
Budgeted				Actual Cost
\$9,500,000.00	\$3,811,454.64	403-0000-668.70-03	PK0801	\$42,483.27

STAFF'S RECOMMENDATION

Authorize the City Manager to execute change order #2 to contract #147-09 Eldorado Golf Course Reconstruction Project in the amount of \$42,483.27.

Frank Simpson City Manager



Public Works

1522 Texas Parkway

Phone: 281.403.8500

Missouri City, Texas 77489

Fax: 281.403.8988

Request for Information

Project:		Quail Valley / El Dorado Golf Course Proje	ect	-
Date:	2-Mar-09	RFI#:	3	
Project #:	IFB # 147-09		***************************************	
Submitted To:	COMC	Submitted By:	Heritage Links	
Phone:	281-403-8500	Phone:	281-866-0909	ž
Email:	damon.williams@missouricitytx.gov	Email:	www.heritage-links.com	•
Fax:	281-403-8988	Fax:	281-866-0944	
		•		,
Subject:	Clay Liner for	the lake construction located on hole # 4		
		21		
Drawings:		None		
Section:				
Specification:				
Information Requ	ested:			
		••••••		***************************************
See attached scop	e of work in Heritage Links' RFI-00	03.		
30 · 100m2				
				Management Vision - Res. Avenille Construction - Construction
Repsonse:			Q.	
The City of Missou	ri City approves the attached scop	e of work for lining the lake located on hole #	4 with the following exceptions:	
		et for the repair/replacement of curbing on the ust take reasonalble care and use proper prec		
2. Additional pump	ing charges must be pre-approved	by the City.		

3. Work may proceed on the clay liner as proposed herein with the contractors' understanding that a breakdown of the \$31,800 cost by materials and labor

must be provided in order to change the contract.



13131 Champions dr. Suite 105 Houston, TX 77069 phone (281) 866-0909 fax (281) 866-0944

	REQU	JEST FOR INFORMATION / AF	PPROVAL			
Project No.:	700-7087	Client: City of Missouri City		Request No.:	3	
Prepared By:	Jon Odonnell	Location: Quail Valley Golf Course		Date:	3/10/2009	
Drawing No.:		Contract Reference		Specification:		
Verbal Notificat	ion Given To:	Date of Verbal:		Date of Issue:		
Question / Problem	Heritage was requested to	o line the lake on hole #4 with a clay liner fr	om material exca	vated on the golf	course.	
Proposed Solution / Change	compacted with a D-6 do so as not to interrupt cur streets will be cleaned at	umped dry then the bottom up to the propo ozer up to 5 times as approved by the Owne rent operations. A flagman will be used at the end of each day. We estimate one day en street curbs at place of the road crossin liner leaks.	r. The work will l road crossings d and a half to cor	be performed ove uring the haul op nplete work. Her	er a weekend eration. The itage will not	
S pe		Task Description		Labor	Material	
900	Haul approx. 1,600 tons	of clay stockpiled next to Tee on hole #5		\$ 21,460.00	\$ -	
rop	Pump existing water from	n the bottom of the Lake		\$ 3,800.00	\$ -	
ъ.	Spread and compact			\$ 6,540.00	\$ -	
	Cost Impact	Schedule Impact		Action Dates		
Lump Sum \$			3/11/2009	Response fro	om Owner	
Cost Plus %		Increased 0 # of days	3/14/2009	Start D		
Per Contract Ra	ites		3/15/2009	Completion Date		
Additional Supp Cost estimate d	porting Documents: etail					
D .	fully and water at 1	Jon ODonnell				
Respect	fully submitted by:	Print Name	Signed			
Proposed	d Solution / Change					
Approved						
Denied		Client's Signature			Date	

Quail Valley - Lake # 4 Clay Liner Installation

		HOURLY RATE	OT RATE	OT HOURS WEEK	TOTAL OT COST	Ī	PAYROL TAXES			TOTAL COST
				10		Ì	24%			
STAFF	1									
Supervisor									\$	1,000.00
Flagman	\$	12.00	\$ 18.00	16	\$ 288.00	\$	69.12		\$	357.12
Flagman	\$	12.00	\$ 18.00	16	\$ 288.00	\$	69.12		\$	357.12
Labor (Pump)	\$	12.00	\$ 18.00	16	\$ 288.00	\$	69.12		\$	357.12
Labor (Street Clean)	\$	12.00	\$ 18.00	16	\$ 288.00	\$	69.12		\$	357.12
Labor (Street Clean)	\$	12.00	\$ 18.00	16	\$ 288.00	\$	69.12		\$	357.12
Operator (Excavator)	\$	20.00	\$ 30.00	16	\$ 480.00	\$	115.20		\$	595.20
Operator (Truck)	\$	16.00	\$ 24.00	16	\$ 384.00	\$	92.16		\$	476.16
Operator (Truck)	\$	16.00	\$ 24.00	16	\$ 384.00	\$	92.16		\$	476.16
Operator (Truck)	\$	16.00	\$ 24.00	16	\$ 384.00	\$	92.16		\$	476.16
Operator (Truck)	\$	16.00	\$ 24.00	16	\$ 384.00	\$	92.16		\$	476.16
Operator (Dozer)	\$	27.00	\$ 40.50	20	\$ 810.00	\$	194.40		\$	1,004.40
Operator (Dozer)	\$	30.00	\$ 45.00	20	\$ 900.00	\$	216.00		\$	1,116.00

sub-total	\$ 7,405.84

	DAILY RENTAL	FUEL USUAGE / HR	MAINT COST 8.5%	DOWN TIME 5.0%	WORKING DURATION	EQUIPMENT COST	FUEL COST	TOTAL FUEL COST	TOTAL COST
EQUIPMENT									
Off-Road Truck	\$ 684.67	14	\$ 58.20		2	\$ 1,369.34	\$ 2.25	\$ 630.00	\$ 1,999.34
Off-Road Truck	\$ 684.67	14	\$ 58.20		2	\$ 1,369.34	\$ 2.25	\$ 630.00	\$ 1,999.34
Off-Road Truck	\$ 684.67	14	\$ 58.20		2	\$ 1,369.34	\$ 2.25	\$ 630.00	\$ 1,999.34
Off-Road Truck	\$ 684.67	14	\$ 58.20		2	\$ 1,369.34	\$ 2.25	\$ 630.00	\$ 1,999.34
Excavator	\$ 435.19	14	\$ 36.99		2	\$ 870.38	\$ 2.25	\$ 630.00	\$ 1,500.38
Dozer - D6T	\$ 671.24	15	\$ 57.06		3	\$ 2,013.72	\$ 2.25	\$ 675.00	\$ 2,688.72
Dozer - D6T	\$ 671.24	15	\$ 57.06		3	\$ 2,013.72	\$ 2.25	\$ 675.00	\$ 2,688.72
Superintendent Truck	\$ 65.00	5	\$ 5.53		3	\$ 195.00	\$ 2.25	\$ 225.00	\$ 420.00
Tractor w/trailer	\$ 80.00	6	\$ -		3	\$ 240.00	\$ 2.25	\$ 270.00	\$ 510.00
Skid Steer Loader	\$ 65.00	5	\$ -		3	\$ 195.00	\$ 2.25	\$ 225.00	\$ 420.00
Water Truck	\$ 240.00	6	\$ -		3	\$ 720.00	\$ 2.25	\$ 270.00	\$ 990.00
Pump & Hose									\$ 1,000.00

sub-total \$ 18,215.18

OTHER						COST
Misc Materials and Equipm	ent				\$	800.00
Surveyor & Equipment					\$	1,200.00

sub-total	S	2.000.00

Summary of Cost

Staff		\$ 7,405.84
Equipment		\$ 18,215.18
Other		\$ 2,000.00
		\$ 27,621.02
Profit	15%	\$ 4,143.15
TOTAL COST		\$ 31,764.17



Public Works

1522 Texas Parkway

Phone: 281.403.8500

Missouri City, Texas 77489

Fax: 281.403.8988

Request for Information

Project:		Quail Valley / El Dorado Golf Course Projec	ot					
Date:	8-Apr-09	RFI #:	4					
Project #:	IFB # 147-09	-						
Submitted To:	сомс	Submitted By:	Heritage Links					
Phone:	281-403-8500	Phone:	281-866-0909					
Email:	vruda@missouricitytx.gov	Email:	www.heritage-links.com					
Fax:	281-403-8988	Fax:	281-866-0944					
Subject: Drawings:	***************************************	or changes to the cart path concrete depth		ı				
Section:								
Specification:								
nformation Requ	ested:							
eritage submitted iks requires appr	ritage submitted a revised cost breakdown for increasing the cart path concrete depth from 4" to 6". Per the City management team request, Heritage ks requires approval for the increased scope of work.							
1000000								
Response:								
e revised cost proposal submitted by Heritage Links on 4/7/09 to install a 6" cart path per plans and specification and changes listed in RFI #4 for an alled price of \$1.24/sf is approved by the COMC.								



13131 Champions dr. Suite 105 Houston, TX 77069 phone (281) 866-0909 fax (281) 866-0944

		REQUEST FOR	INFORMATION /	APPROVAL					
Project No.:	700-7087	Client:	City of Miss	ouri City	Request No.:	4			
Prepared By:	Jon O'Donnell	Location:	Quail Valley G	olf Course	Date:	4/7/2009			
Drawing No.:		Contract Reference			Specification:				
Verbal N	otification Given To:		Date of	Verbal: 12/13/09	Date of Issue:				
Question / Problem	deduct for Owner pu	urchasing the concrete	or price on the following c for the cart path. (2) Chan ns will be 6" depth with Ro	ge the depth of the o	concrete from 4" to	(1) Contract 6" with the nsion joints.			
Proposed Solution / Change	The total deduct for this change to the contract is at \$191,697.70 (or a new installed price of \$1.24 / sf). The cart path will be installed per the plans and specifications and the changes in this RFI. See attached tabulation worksheet for cost details. The Owner shall supply the concrete to pour 6" depth cart path and notify Contractor with name and contact person of they supplier for coordination of material delivery. Contractor will supply 6" form boards and 6" redwood expansion joints.								
Cos	st Impact		Schedule Impact		Action Dates				
Lump Sum \$	\$ (191,697.70)		Increased	4/9/2009	Response from	n Owner			
Cost Plus %			0 <u># of days</u>		Start Da	1000			
Per Contract Ra	ites				Completion	1 Date			
Additional Supp	porting Documents:								
See Change	in Work/Price Tab	ulation Worksheet							
Respectful	ly submitted by:		Jon O'Donnell Print Name		Signed				
Proposed S	olution / Change								
Approved									
Denied			Client's Sig	gnature		Date			

City of Missouri City Quail Valley Golf Course

Change in Work/Price Tabulation Worksheet For RFI #: 4

itom #	Item Description	Unit	Estimated Quantity	Material	Labor	Total
1	Owner has elected to purchase concrete for contractor's installation of the concrete cart path which included the price for concrete.	CY		\$ (189,001.70)		\$ (189,001.70)
2	Owner has elected to not install rebar in cart path	lf	24,534.00	\$ (30,800.00)	\$ (5,888.00)	\$ (36,688.00)
2	Concrete forming boards change from 4" to 6" due to change in depth of cart path	<u>L</u> F	25,000	\$ 6,500.00		\$ 6,500.00
3	Change in depth of concrete requires change in depth of redwood expansion joints from 4" to 6"	lf	6,522.00	\$ 4,500.00		\$ 4,500.00
4	Additional resources due to the increase depth of cart path from 4" to 6". The productivity is reduced by the volumn of concrete per If which has increased by 50%	sf	196,271.00		\$ 30,492.00	\$ 30,492.00
5	Delete the installation of 2" cushion sand base for cart path	су	(1,739.13)	\$ (7,150.00)	\$ (4,850.00)	\$ (12,000.00)
6	Additional cost for clean-up due the increased traffic of concrete trucks from the 4" depth to the 6" depth. Cost if figured for an additional 2 hours per hole for a dozer and operator at a rate of \$125/hr for 18 holes plus 4 hours of travel time	hole	18.00		\$ 4,500.00	\$ 4,500.00
					····	
		,		 		
	Total for RFI			(215,951.70)	24,254.00	(191,697.70)



Public Works

1522 Texas Parkway

Phone: 281.403.8500

Missouri City, Texas 77489

Fax: 281.403.8988

Request for Information

Project: -		Quail Valley / El Dorado Golf Course Proje	ect	
Date:	2-Mar-09	RFI #:	7C	
Project #:	IFB # 147-09			
Submitted To:	сомс	Submitted By:	Heritage Links	
Phone:	281-403-8500	Phone:	281-866-0909	
Email:	vruda@missouricitytx.gov	Email:	www.heritage-links.com	
Fax:	281-403-8988	Fax:	281-866-0944	
Subject:		Wet Well - Wet Set Resubmittal		
Drawings: _	QVGC Pla	an & Profile Sheets 32 & 33		
Section:				
Specification:	Incl	uded in above sheets		
Information Reque	ested:			
leritage Links has s roposed intake pip		for constructing the wet well adjacent and conne	ecting to the existing sturcture, while e	liminating the
Response:				
ithout costs must b	I proposal has been reviewed be fully documented (paid invol thus at no additional cost.	I by the City of Missouri City and is approved wit bics preferable) before COMC will pay contractor	th the following understood: all un-det rr; and the existing pumps will be rem	ermined conditions oved under the current

Signature PE

3-25-09

Date



13131 Champions dr. Suite 105 Houston, TX 77069 phone (281) 866-0909 fax (281) 866-0944

	REQU	EST FOR INFORMATION / AP	PROVAL						
Project No.:	700-7087	Client: City of Missouri City	Request No.: 007-C						
Prepared By:	Jon ODonnell	Location: Quail Valley Golf Course	Date: 3/22/2009						
Drawing No.:	a	Contract Reference	Specification:						
Verbal Notificati	ion Given To:	Date of Verbal:	Date of Issue:						
Question / Problem	Revise wet well structure to incorporate a portion of the existing structure into the new structure. This will be completed by eliminating the 30" intake structure and utilizing the existing concrete box.								
Proposed Solution / Change	Install 96" wet-well and slab as indciated on drawings. Eliminate the 30" intake into the lake. Utilize the existing concrete box as the wet-well. Connect the existing wet-well with the new 96" sructure. The connection will be completed with a proposed 42" pipe. This will be completed by coring a hole in each structure and sealing then to be water tight. Prepare a temporary cofferdam in front of the existing concrete box so that the existing concrete box can be inspected and the larger opening can be cut into the concrete on the front side of the concrete box to acheive maximum flow to the pump station. Remove smaller concrete box (that served as the wet-well for the smaller pump) an make any ncessary repairs. Install SS-13 Seapage Control in front of Existing Concerete Box								
(Cost Impact	Schedule Impact	Action Dates						
Lump Sum \$		Increased	Response from Owner						
Cost Plus %		# of days	Start Date						
Per Contract Ra	ites		Completion Date						
Additional Supporting Documents: See Change in Work / Price Tabulation Worksheet									
Respect	fully submitted by:	Jon P. O'Donnell Print Name Signed							
Proposed	Proposed Solution / Change								
Approved									
Denied		Client's Signature	Date						

City of Missouri City Quail Valley Golf Course

Change in Work/Price Tabulation Worksheet / Revised Scope of Work

For RFI 007-C

Item #	Item Description	Unit	Estimated Quantity	Material	Labor			Total
item#	nem bescription	Unit	Quantity	iviateriai	l	Labor	}	Total
1	Mobilization	ls	1				\$	3,500
2	96" Wet Well Structure / Install	ls	1	\$ 8,800	\$	28,938	\$	37,738
3	Seal Slab	ls	1		\$	1,250	\$	1,250
4	Reinforced Concrete Footing	ls	1	\$ 3,250	\$	3,560	\$	6,810
5	Reinforced Concrete Piers	ls	1	\$ 2,450	\$	4,460	\$	6,910
6	Reinforced Concrete Slab	ls	1	\$ 6,420	\$	7,818	\$	14,238
7	Temporary Coffer Dam / Core Opening	ls	1	\$ 3,000	\$	6,000	\$	9,000
8	Core 42" hole for intake pipe from existing concrete box to 96" wet well structure	ea	2		\$	2,460	\$	4,920
9	Install 42" Intake Pipe Between Boxes (including excavation). Materials 40' 42" schedule 40 HDPE (ordered in 20' sections). Labor includes sealing both end of pipe with link seal. Pipe bedding will be stabilized sand.	lf	40	\$ 2,400	\$	6,800	\$	9,200
10	Fuel for Generator / Pump. Generator for 2 weeks at \$600 / week and fuel at \$30 gal / day for estimated \$1,400	ls	1		\$	2,600	\$	2,600
11	Seepage ESS-13 Soil Sealant Supply & Install. 5 Drums (\$825 / drum) plus shipping (estimated at \$1,450 from phx + handling to site \$250). Curtain with plastic to create area of application \$1,400. Application implements for installing into lake (Pump, hose, nossel) \$900. Disposal \$275. Misc items \$500. Machinery to stabilize drums \$1,800 + \$1.200 labor	Is	1	\$ 8,900	\$	2,800	\$	11,700
12	Prepare Site & Location (Including Grading)	ls	1		\$	3,450	\$	3,450
13	On-site supervisor of Sub-Contractor	ls	1		\$	4,500	\$	4,500
14	Clean-Up Site / Create Haul Road	ls	1		\$	2,400	\$	2,400
			sub-total			\$	118,216	
			Mark-Up on Heritage Work 15%					6,718.50
			Mark-Up on Sub-Contractor Work					3,671.30
			Total Cost					128,605.80

Un-Determined Conditions without Costs

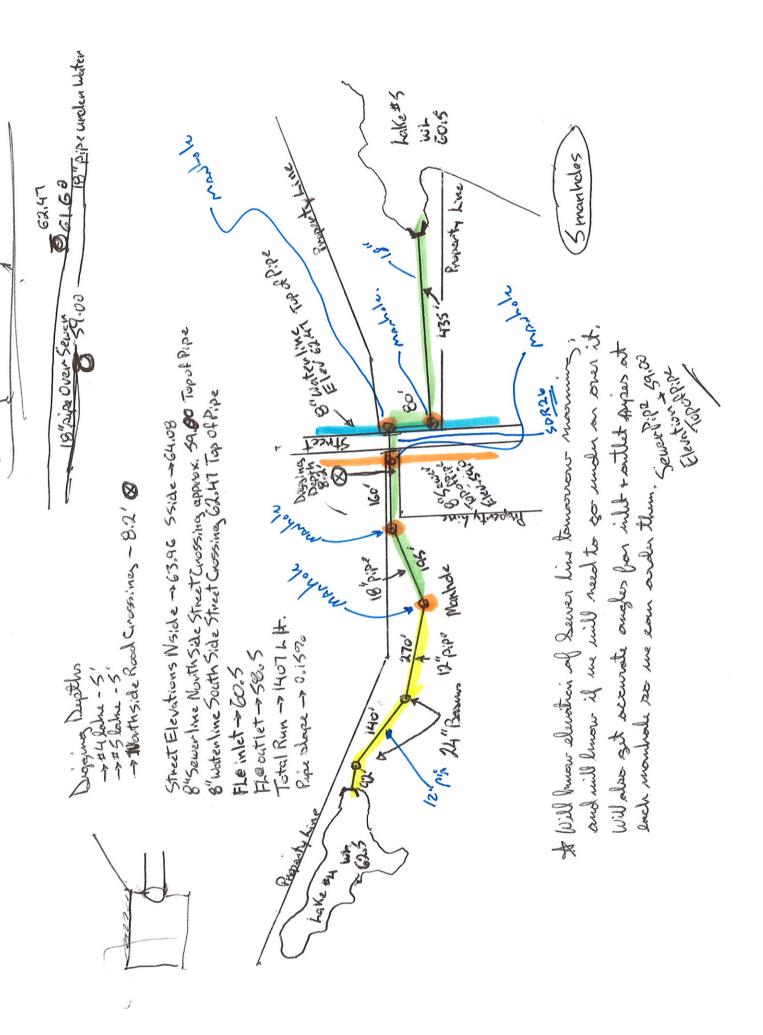
		Total Estimated Cost RFI - 007-C	1	47,580.80
		Total Cost	\$	18,975
		Mark-Up on Heritage Work 15%	\$	2,475
		sub-total	\$	16,500
3	Repair hole or connection from smaller box to larger existing concrete box	Not to Exceed	\$	5,000
2	Repair Existing Concrete Box Structure including Capping to Sections where Existing Pumps are Currently Placed	Not to Exceed	\$	8,000
1	Clean-Out Existing Concrete Box	Not to Exceed	\$	3,500

Sub-Contract work



13131 Champions dr. Suite 105 Houston, TX 77069 phone (281) 866-0909 fax (281) 866-0944

		REQUEST FOR	INFORMATION /	APPROVAL		
Project No.:	700-7087	Client:	City of Miss	souri City	Request No.:	8
Prepared By:	Jon O'Donnell	Location:	Quail Valley 0	Solf Course	Date:	4/7/2009
Drawing No.:		Contract Reference			Specification:	
Verbal N	lotification Given To	:	Date o	of Verbal:	Date of Issue:	
Question / Problem	installing SDR 26 F	Pipe for the road crossing	pasin on hole # 4 to Lake g, bedding the street cro trench safety will be adh	ssing in stabilized c	ement. We will insta	III 5 man-holes
Proposed Solution / Change	Heritage Links will install the 18" line (880 Linear Feet of ADS Pipe) from hole # 4 to Lake # 5 including 5 man-holes. This will be completed by open cutting the street, installing the required road crossing (50 Linear Feet of SDR 26), bedding with stabilized cement. Installing 5 man-holes.					
Cost Impact		Schedule Impact	T	Action Dates		
Lump Sum \$ \$ 54,836.00)	Increased		Response fro	om Owner
Cost Plus %		0 <u># of days</u>		Start D	ate	
Per Contract Rates					Completio	n Date
Additional Sup	porting Documents					
See attched	sketch attached i	ndciating pipe size, lo	ocation			
Respectfully submitted by:		Jon O'Donnell Print Name		Signed	1 4-7	
Proposed S	Solution / Change					
Approved	ı 🗆					
Denied		Client's Si	ignature		Date	





Council Agenda Item April 20, 2009

4. CONSENT AGENDA

(d) Consider authorizing continuation of agreement for tax collection services with Linebarger Goggan Blair & Sampson, L.L.P.

Background information attached as follows:

Cover Memo

Tax Collection Services Agreement



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 4d Continuation of Agreement for Tax Collection Services

Submitted by: Frank Simpson, City Manager

SYNOPSIS

This item provides for the City's consideration for continuation of the Agreement for Tax Collection Services with Linebarger, Goggan, Blair & Sampson, LLP (Linebarger).

BACKGROUND

The City entered into a contract with Linebarger effective July 1, 2004. The contract was amended on March 20, 2006. Pursuant to Article 5 of the Agreement, the contract automatically renews for successive one-year terms every July 1, unless either party notifies the other party in writing that it desires to not renew the Agreement by May 1 of that same year. Accordingly, if the City desires to not renew the contract for the upcoming one-year term to begin July 1, 2009, the City must submit such notice in writing to Linebarger by May 1, 2009

FISCAL ANALYSIS

Should the City notify the tax collection firm that the contract is not being renewed, the contract provides for a six month wind-down period for the firm to prosecute any tax suits, applications for tax warrants or bankruptcy claims pending on June 30, 2009. The City would then have the option of executing a new contract with Linebarger or another tax collection firm or performing the tax collection efforts in house. Currently, the City pays Linebarger 15% of all delinquent taxes, penalty and interest collected and paid.

STAFF'S RECOMMENDATION

City Staff recommends continuation of the existing agreement with Linebarger, Goggan, Blair & Sampson, LLP at this time, consider the solicitation of proposals in 2010 and then to evaluate any proposals from Linebarger, et al and any other firms that may be interested in providing the service.

Frank Simpson City Manager

Agreement Modifying Written Contract for Tax Collection Services

This agreement is made and entered into by and between **City of Missouri City** acting herein by and through its governing body, hereinafter styled First Party, and the law firm of **Linebarger Goggan Blair & Sampson, LLP**, hereinafter styled Second Party.

The First Party and Second Party previously entered into a contract entitled "Agreement for Tax Collection Services" on the 1st day of July, 2004, and a copy of this contract is attached hereto as Exhibit A.

The First Party and Second Party desire to, and do hereby modify the "Agreement for Tax Collection Services" found in Exhibit A attached hereto, in the following respects: The language in Article 2, Section 2.03 of the contract is hereby deleted, and the following italicized language is substituted:

- 2.03 Taxes owed to the First Party shall become subject to this contract upon the following dates, whichever occurs first:
 - (a) On February 1 of the year in which the taxes become delinquent if a previously filed tax suit is then pending against the property subject to the tax;
 - (b) On the date any lawsuit is filed with respect to the recovery of the tax if the tax is delinquent and is required to be included in the suit pursuant to TEX. TAX CODE § 33.42(a);
 - (c) On the date of filing any application for tax warrant where recovery of the tax or estimated tax is sought and where the filing of an application for tax warrant by the Firm is at the request of First Party's Tax Assessor-Collector;
 - (d) On the date of filing any claim in bankruptcy where recovery of the tax is sought;
 - (e) In the case of delinquent tangible personal property, on the 60th day after the February 1 delinquency date; or
 - (f) On July 1 of the year in which the taxes become delinquent.

This modification agreement is executed on behalf of the First Party and the Second Party by the duly authorized persons whose signatures appear below.

CITY OF MISSOURI CITY

First Party

Frank Simpson

City Manager

Date: 3-20-06

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

Second Party

Michael J. Siwjerka

Partner

Date: 3-20-06

ATTEST:

Patrice Fogar City Secreta

EXHIBITA

Agreement for Tax Collection Services

This Agreement is made between Linebarger, Goggan, Blair & Sampson, LLP (hereinafter referred to as the "Firm") and City of Missouri City (hereinafter referred to as the "Client").

<u>Article 1 – Nature of Relationship</u>

- 1.01 The parties hereto acknowledge that this Agreement creates an attorney-client relationship.
- 1.02 The Client hereby employs the Firm to provide the services hereinafter described for compensation hereinafter provided.

Article 2 - Scope of Services

- 2.01 The Firm shall take reasonable and necessary actions to collect property taxes that are owed to the Client and that are subject to this agreement, as hereinafter provided.
- 2.02 The Client may from time-to-time specify in writing additional actions to be taken by the Firm in connection with the collection of taxes that are owed to the Client. Client further constitutes and appoints the Firm as Client's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to prosecute the Client's claim for taxes.
- 2.03 Taxes owed to the Client shall become subject to this agreement upon the following dates, whichever occurs first:
 - On February 1 of the year in which the taxes become delinquent if a previously filed tax suit is then pending against the property subject to the tax:
 - (b) On the date any lawsuit is filed with respect to the recovery of the tax if the tax is definquent and is required to be included in the suit pursuant to TEX. TAX CODE § 33.42(a):
 - (c) On the date of filing any application for tax warrant where recovery of the tax or estimated tax is sought and where the filing of an application for tax warrant by the Firm is at the request of Client's Tax Assessor-Collector.

- (d) On the date of filing any claim in bankruptcy where recovery of the tax is sought; or
- (e) On July 1 of the year in which the taxes become delinquent.

Article 3 - Compensation

- 3.01 Client agrees to pay to the firm, as compensation for the services required herein, the amount of fifteen (15%) percent of the amount of all delinquent taxes, penalty and interest subject to the terms of this contract as set forth in Paragraph 2.03 above, collected and paid to the collector of taxes during the term of this contract, as and when collected.
- 3.02 The Client shall pay the Firm by the twentieth day of each month, all compensation earned by the Firm for the previous month as provided in this Article 3. All compensation above provided for shall become the property of the Firm at the time payment of the taxes, penalty and interest is made to the collector.

Article 4 - Intellectual Property Rights

- 4.01 The Client recognizes and acknowledges that the Firm owns all right, title and interest in certain proprietary software that the Firm may utilize in conjunction with performing the services provided in this Agreement. The Client agrees and hereby grants to the Firm the right to use and incorporate any information provided by the Client ("Client Information") to update the databases in this proprietary software, and, notwithstanding that Client information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the Client shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the Client shall be entitled to obtain a copy of such data that directly relates to the Client's accounts at any time.
- 4.02 The Firm agrees that it will not share or disclose any specific confidential Client Information with any other company, individual, organization or agency, without the prior written consent of the Client, except as may be required by law or where such information is otherwise publicly available. It is agreed that the Firm shall have the right to use Client Information for internal analysis, purposes of improving the proprietary software and database, and to generate aggregate data and statistics that may inherently contain Client Information. These aggregate statistics are awned solely by the Firm and will generally be used internally, but may be shared with

the Firm's affiliates, partners or other third parties for purposes of improving the Firm's software and services.

Article 5 - Term and Termination

- 5.01 This Agreement shall be effective on the 1st day of July, 2004 (the "Effective Date") and shall expire on the 31st day of June, 2007 (the "Expiration Date") unless extended as hereinafter provided.
- 5.02 Unless prior to 60 days before the Expiration Date, the Client or the Firm notifies the other in writing that it does not wish to continue this Agreement beyond its initial term, this Agreement shall be automatically extended for an additional one year period without the necessity of any further action by either party. In the absence of any such 60 day notice by either the Client or the Firm, the Agreement shall continue to automatically renew for additional and successive one-year terms in the same manner at the end of each renewal period.
- 5.03 If at any time during the initial term of this Agreement or any extension hereof, the Client determines that the Firm's performance under this Agreement is unsatisfactory, the Client shall notify the Firm in writing of the Client's determination. The notice from the Client shall specify the particular deficiencies that the Client has observed in the Firm's performance. The Firm shall have sixty (60) days from the date of the notice to cure any such deficiencies. If at the conclusion of that sixty-day remedial period, the Client remains unsatisfied with the Firm's performance, the Client may terminate this Agreement effective upon the expiration of thirty days following the date of written notice to the Firm of such termination ("Termination Date").
- 5.04 Whether this Agreement expires or is terminated, the Firm shall be entitled to continue to prosecute any tax suits, applications for tax warrants or bankruptcy claims pending on the Termination Date or Expiration Date for an additional six months following termination or expiration. The Client agrees that the Firm shall be compensated as provided by Article 3 for any base tax, penalties and interest collected in the pending matters during the six-month period.

Article 6 - Miscellaneous

6.01 Assignment and Subcontracting, This Agreement is not assignable, provided however, the Firm may from time-to-time obtain co-counsel or subcontract some of the services provided for herein to other law firms or entities. In such cases, the Firm will retain supervisory control and responsibility

for any services provided by such co-counsel or subcontractors and shall be responsible to pay any compensation due to any such co-counsel or subcontractor.

- 6.02 Arbitration. Any controversy between the parties to this Agreement involving the construction or application of any of the terms, covenants, or conditions of this Agreement shall, on the written request of one party served on the other, be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act.
- 6.03 Integration. This Agreement contains the entire agreement between the parties hereto and may only be modified in a written amendment, executed by both parties.
- 6.04 Representation of Other Taxing Entities. The Client acknowledges and consents to the representation by the Firm of other taxing entities that may be owed taxes or other claims and be secured by the same property as the Client's claim.

IN CONSIDERATION OF THE TERMS AND COMPENSATION HEREIN STATED, the Firm hereby accepts said employment and undertakes the performance of this Agreement as above written. This Agreement is executed on behalf of the Firm and of the Client by the duly authorized persons whose signatures appear below.

CITY OF MISSOURI CITY

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

BY: Muhael Minute
Partner

Date: 6/28/04

ATTEST:
Deputy City Secretary

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

BY: Muhael Minute
Partner

Date: 6/28/04



Council Agenda Item April 20, 2009

4. CONSENT AGENDA

- (e) Consider approval and acceptance of gift deed for parkland from Olympia Estates II Associates Limited to the City of Missouri City.
- (f) Consider approval and ratification of post-closing agreement executed by Olympia Estates II Associates Limited and the City of Missouri City providing for the removal of livestock from such parkland.

Background information attached as follows:

Cover Memo (REVISED)

Gift Deed

Post-Closing Agreement

Survey



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 4(e) and 4(f) Consider approval and acceptance of gift deed for parkland from

Olympia Estates II Associates Limited to the City of Missouri City and approval and ratification of post-closing agreement executed by Olympia Estates II Associates Limited and the City of Missouri City providing for the

removal of livestock from such parkland.

Submitted by: Caroline Kelley, City Attorney

Prepared by: Ryan Stults, Assistant City Attorney

SYNOPSIS

Olympia Estates II Associates Limited (Olympia Estates) is gift deeding 3.89 acres of land to the City to satisfy the remainder of its parkland dedication requirements for Olympia Estates Phase 1, Sections 1, 2, 3, 4 and 5. The 3.89 acres is contiguous to the south side of Community Park.

BACKGROUND

Pursuant to Section 82-174 of the Code of Ordinances of the City of Missouri City, Texas, Olympia Estates is required to donate 4.3 acres of land for parkland for development occurring in Olympia Estates Phase 1, Sections 1, 2, 3, 4 and 5.

Olympia Estates made a prior donation of an encumbered 1.24-acre private park which is credited at 1/3 value for a total of 0.41 acres. The remaining parkland dedication requirement is 3.89 acres. For 1.3 acres, Olympia Estates caused a letter of credit worth \$46,200 to be issued for benefit of the City and the City drew down the entire amount. Olympia Estates caused two letters of credit worth \$71,100 and \$78,300 to be issued for benefit of the City in lieu of parkland dedication. On April 17, 2009, Olympia Estates executed a gift deed for the entire 3.89 acres. The City is refunding \$46,200 for 1.3 acres of the land and canceling the outstanding letters of credit. The parties executed a post-closing agreement for the removal of livestock from the land.

FISCAL ANALYSIS

None. The \$46,200 previously received by the City had not been budgeted for the purchase of parkland and the dedication negates the need for such a purchase.

STAFF'S RECOMMENDATION

Approve and accept the Gift Deed. Approve and ratify the Post-closing Agreement.

Frank Simpson City Manager

Gift Deed

Date: April 19, 2009

Grantor: OLYMPIA ESTATES II ASSOCIATES LIMITED, a Texas limited partnership.

<u>Grantor's Mailing Address</u>: 7373 E. Doubletree Ranch Rd., #225 Scottsdale, Maricopa County, Arizona 85258.

Grantee: City of Missouri City, a Texas home-rule municipality.

<u>Grantee's Mailing Address</u>: 1522 Texas Parkway, Missouri City, Fort Bend and Harris Counties, Texas 77489.

<u>Consideration</u>: For the growth and benefits to accrue to the citizens of the City of Missouri City, Texas, and other good and valuable consideration.

<u>Property (including any improvements)</u>: The real property described on Exhibit "A" attached hereto and incorporated herein.

Reservations from Conveyance: None.

Exceptions to Conveyance and Warranty: None.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, GRANTS, GIVES, DONATES, AND CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, TO HAVE AND TO HOLD the Property to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

[Signature page to follow]

Grantor has executed this Deed of	on theday of _ Lpc:\ _2009
	GRANTOR
	OLYMPIA ESTATES II ASSOCIATES LIMITED, a Texas limited partnership
	By its Sole General Partner, MILLENNIUM DEVELOPMENT XXV, INC., a Texas for-profit corporation By: Name: Raymond G. Tiedje Title: Director
STATE OF TEXAS SOUNTY OF Harris	•
	e this \(\frac{1}{N} \) day of \(\frac{1}{N} \). 2009, by ELOPMENT XXV, INC., a Texas for-profit corporation the sole SLIMITED, a Texas limited partnership, on its behalf.
JEAN HICKS Notary Public STATE OF TEXAS MY COMM. EXP. 04-14-2012	Notary Public, State of
	ACCEPTANCE BY GRANTEE
	CITY OF MISSOURI CITY, a Texas home-rule municipality
	By: Name: Title:
After recording, return to: CITY OF MISSOURI CITY, TEXAS ATTN: LEGAL DEPARTMENT 1522 TEXAS PARKWAY MISSOURI CITY, TX 77489	ATTEST: By: Patrice Fogarty City Secretary

John T. Jakubik & Associates, LLC

4309 Greenbriar Drive • Stafford, Texas 77477 • 281/240-0498 • Fax 281/240-2435 www.jakubiksurveying.com

DESCRIPTION OF 3.89 ACRES DAVID BRIGHT LEAGUE, A-13 FORT BEND COUNTY, TEXAS

Being 3.89 acres in the David Bright League, A-13, Fort Bend County, Texas and being out of that certain called 47.4 acre tract described in Warranty Deed dated May 20, 1913, from T. Martin et al to Bettie Palmer M. Hutcheson, recorded in Volume 66, Page 207 of the Deed Records of Fort Bend County, Texas; said 3.89 acres being more particularly described as follows:

BEGINNING at a one inch iron pipe found on the north line of said called 47.4 acre tract for the southeast corner of said Glenn Lakes Section Three, a map or plat thereof recorded under Slide 1023A of the Plat Records of Fort Bend County, Texas and the southwest corner of a called 12.620 acre tract described as Tract Two in that certain Warranty Deed dated May 07, 1987 from Homer Scott, Trustee to the City of Missouri City as recorded in Volume 1943, Page 2541 of the Official Records of Fort Bend County, Texas, and the northeast corner of a called 0.301 acre tract described in Judgment Of Court In Absence Of Objection, Exhibit "B", dated April 17, 2000, for the City of Missouri City, Texas vs Laurence B. Neuhaus et al, recorded under Fort Bend County Clerk File No. 2000047259, and on the east right-of-way line (60 foot wide) of Mission Valley Drive; said one inch iron pipe having a Texas Coordinate of X= 3,103,536 and Y= 644,848 South Central Zone (NAD'27);

THENCE, N 67° 06' 05" E, along the south line of said called 12.620 acre tract and the north line of said called 47.4 acre tract, a distance of 643.13 feet to a 5/8 inch iron rod with cap set for northeast corner of the herein described tract;

THENCE, S 02° 34′ 32″ E, along the east line of the herein described tract, a distance of 392.70 feet to a 5/8 inch iron rod with cap set for the southeast corner of the herein described tract;

THENCE, S 87° 24′ 56″ W, along the south line of the herein described tract being parallel with and 60 feet north of the south line of said called 47.4 acre tract, a distance of 599.26 feet to a 5/8 inch iron rod with cap set on the east right-of-way line of Mission Valley Drive, for corner;

THENCE, Northerly, along east right-of-way line, with a non tangent curve to the right having a radius of 1470.00 feet, a central angle of 02° 16' 03", a chord which bears N 05° 20' 46" W, a distance of 58.17 feet, for an arc distance of 58.18 feet to a 5/8 inch iron rod found for the end of said curve;

THENCE, N 03° 06' 12" W, continuing along said east right-of-way line and the west line of the herein described tract, a distance of 111.32 feet to the POINT OF BEGINNING and containing 169,318 square feet or 3.89 acres.

All coordinates and bearings are based on the Texas Coordinate System, South Central Zone (NAD'27)

This description is accompanied by a separate plat dated March 24, 2009 prepared by John T. Jakubik & Associates, LLC.

File: 5564E Date 3-24-09

> Jeffrey L. Fansler R.P.L.S No. 43248

POST CLOSING AGREEMENT

This post-closing agreement is between Olympia Estates II Associates Limited ("Donor") and the City of Missouri City ("Donee"), (collectively, "the Parties") and is effective on April 17, 2009.

On April 17, 2009, the Parties closed on Property, referenced in Exhibit "A," the real estate contract, attached hereto. At the time of closing, cattle and cattle accoutrements were located on said Property. Donor does not wish to convey to Donee and Donee does not wish to receive said cattle and cattle accoutrements. However, Donor and Donee desire to proceed to closing and hereby agree as follows:

1. Donor agrees to remove all cattle and the following personal property from Property by April 21, 2009:

Stock wells

- 2. Donee agrees to allow cattle and the above-referenced personal property to remain on Property until April 21, 2009.
- In so agreeing, Donee assumes no responsibility for care of abovereferenced cattle nor maintenance of above-referenced personal property during the time period such cattle and personal property remain on Property.
- 4. Donor agrees to ensure cattle cause no damage to property not present at the time of closing and further agrees to compensate Donee should cattle cause any such damage to Property.
- 5. Should Donor elect to remove cattle to other property adjoining Property, Donor agrees to erect on such adjacent property structures of sufficient strength and durability to ensure cattle do not encroach on Property. Further, Donor agrees to maintain such structures for the duration cattle remain on adjacent property.
- 6. Donee agrees to allow owner or agents of owner to enter on Property for the purposes of removing cattle and relocating fence structures.
- 7. Donor agrees to indemnify without limitation Donee against any and all claims, demands, damages, or injuries arising from the presence of cattle on Property.
- 8. Donor agrees to hold Donee harmless for any damage done to personal property and to any injury or death of cattle while such personal property and cattle remain on Property.

9. Should it become necessary for purposes of resisting, adjusting, or compromising any claims or demands arising out of the subject matter with respect to which indemnification is provided by this agreement, or for purposes of enforcing this agreement, for Donee to incur any expenses, or become obligated to pay any attorney's fees or court costs, Donor agrees to reimburse Donee for such expenses, attorney's fees, or costs within a reasonable time, in no event to exceed 14 days, after receiving written notice from Donee of the incurring of such expenses, attorney's fees, costs, or obligations.

Donor: Olympia Estates II Associates Limited, a Texas Limited Partnership

By its Sole General Parter, Millennium Development XXV, Inc., a Texas For-Profit Corportation

Raymond G. Tiedje, Director

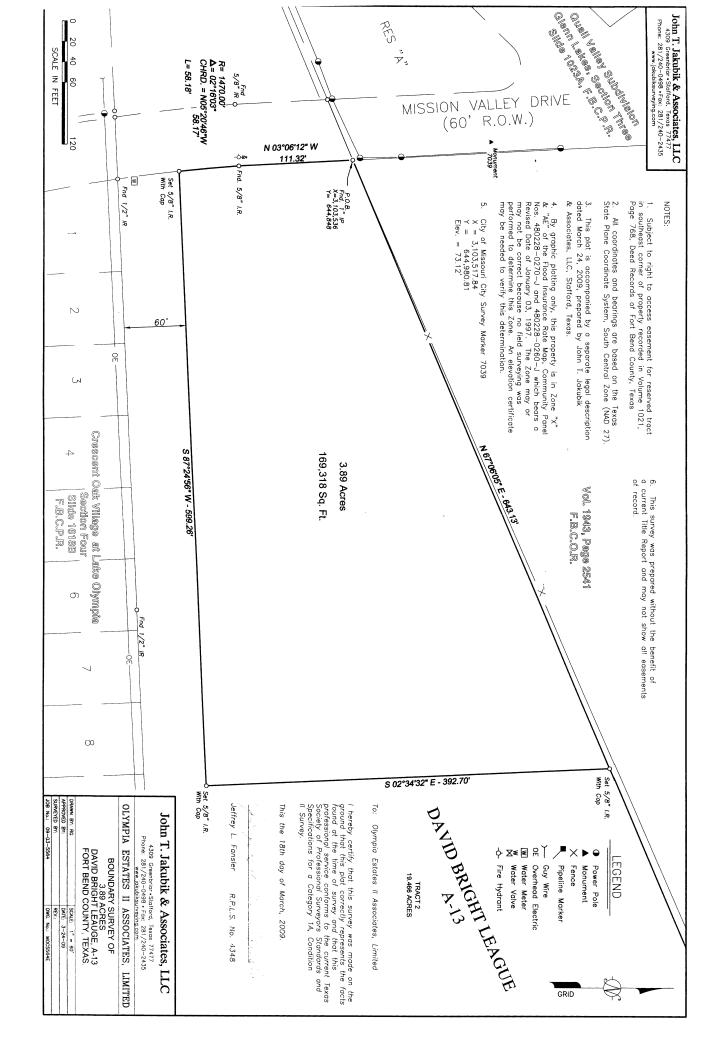
Date: 4/17/09

Donee: City of Missouri City, Texas, A Texas Home-Rule Municipality

Caroline Kelley

City Attorney

Date: april 17,2009





Council Agenda Item April 20, 2009

5. APPOINTMENTS

(a) Consider authorizing the reappointment of **Director – Position 4** and **Director – Position 5** to the Board of Directors of the **Sienna Plantation Management District.**

Background information attached as follows:

Cover Memo



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 5a Reappointment of Directors of the Board of Directors of the Sienna

Plantation Management District

Submitted by: Caroline Kelley, City Attorney

SYNOPSIS

Authorize the reappointment of Dana Osborne as Director - Position 4 and John Knox, Jr. as Director - Position 5 to the Board of Directors of the Sienna Plantation Management District (the District).

BACKGROUND

Section 3829.052 of Chapter 3829 of the Texas Special District Local Laws Code confers jurisdiction on the City Council of the City of Missouri City to appoint directors to the Board of Directors (the Board) of the District. Previously, the City Council has confirmed the appointment of five directors to serve the Board for staggered four-years expiring either on June 1, 2009 or June 1, 2011. The terms for Dana Osborne, Director - Position 4 and John Knox, Jr., Director - Position 5 expire on June 1, 2009. Both Dana Osborne and John Knox, Jr. are over twenty-one years of age, are residents of Fort Bend County, and are otherwise qualified by law to serve as directors of the District.

FISCAL ANALYSIS

No fiscal impact.

STAFF'S RECOMMENDATION

Appoint Dana Osborne as Director - Position 4 and John Knox, Jr. as Director - Position 5 of the Board of Directors of the Sienna Plantation Management District.

Frank Simpson City Manager



Council Agenda Item April 20, 2009

6. AUTHORIZATIONS BY COUNCIL

(a) Consider authorizing the City Manager to execute an agreement with **Kimley-Horn** for **design of the State Highway 6 Median** and **Intersection Improvements.**

Background information attached as follows:

Cover Memo



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 6a Consider authorizing the City Manager to execute an agreement with Kimley-

Horn for design of the State High 6 Median and Intersection Improvements.

Prepared by: Charles Oberrender, CPPB Purchasing Manager

Valerie Ruda, Project Manager

Submitted by: Scott R. Elmer, P.E., Director of Public Works

SYNOPSIS

The State Highway 6 Corridor Access Management Plan recommends installing raised medians to improve safety along the corridor. Staff desires to contract the engineering design services. The contract amount is over \$25,000 and therefore requires action by Council.

BACKGROUND

Through the Houston-Galveston Area Council (H-GAC), the City of Missouri City partnered with the Texas Department of Transportation, City of Sugar Land, City of Houston, Fort Bend County, and Harris County to support a comprehensive study of the State Highway (SH) 6 corridor from IH 10 on the west side of Houston to FM 521. The purpose of the study was to provide the partnering agencies with a list of various solutions to alleviate current mobility and safety issues.

Among the various proposed solutions were the installation of raised medians, consolidation of driveways while utilizing shared and cross-access provisions, installation of additional right and left turn lanes, and signal timing. For Missouri City, the proposed improvements include: raised medians, right turn lane improvements, and signal and intersection improvements. This project will focus on the installation of raised medians, since many of the other recommended improvements have either already been made or are currently being planned in other projects.

Kimley-Horn and Associates, Inc. performed the study, and given their involvement, staff recommended to the Consultant Selection Committee that the firm is the most qualified to perform the design of the median improvements. The firm will be responsible for the following: engineering design, surveying, geotechnical report, bid specifications, final design and construction phase engineering.

The project will receive funding through agreements with TxDOT for constructing the improvements. This federal funding is granted through the Transportation Improvement Program (TIP), and is currently scheduled to be approximately \$3,400,000. Kimley-Horn has prior experience with designing raised median systems to TxDOT's standards and requirements.

Per TxDOT recommendation, the City will partner with the City of Sugar Land in designing the raised medians. Staff has negotiated a proposal that includes designing the raised medians for \$474,420.00 and the time for completion for the design is six months. Via an interlocal agreement, the City of Sugar Land will share the cost of design and construction in the amount of \$98,605 which is based on the amount of the project located with in its jurisdiction. Missouri City's share will be \$375,815. The City of Missouri City will pay Kimley-Horn and be reimbursed by the City of Sugar Land.

FISCAL ANALYSIS

FY09 Funds	FY09 Funds	Account Number	Project Number	FY09 Funds
Budgeted	Available		·	Actual Cost
\$1,360,000.00	\$1,330,119.80	403-0000-658.70-01	TR0801	\$375,815.00

STAFF'S RECOMMENDATION

Authorize the City Manager to execute an agreement with Kimley-Horn and Associates, Inc. for an amount not to exceed \$474,420.00, of which the City of Missouri City's net obligation will not exceed \$375,815 for engineering design services for State Highway 6 median and intersection improvements.

Bill Atkinson

Assistant City Manager



Council Agenda Item April 20, 2009

- **7. PUBLIC COMMENTS** An opportunity for the public to address Council on items/concerns not on this agenda.
- **8. PUBLIC HEARINGS** There are no Public Hearings at this time.



Council Agenda Item April 20, 2009

9. PUBLIC HEARINGS AND CONSIDERATION OF ZONING ORDINANCES

(a) Public hearing to receive comments for or against a request by Brendan McEntee of McEntee Engineering and Design, Inc. to amend Ordinance O-08-20 pertaining to PD, Planned Development District #70 to add an approximate 1.54 acre tract of land into the overall PD development and to allow for deviations from the City's Zoning Ordinance, including architectural design standards for the outparcel tracts; providing for severability; and to consider the ordinance on the second and final reading. The 1.54 acre tract of land is located northeast of the intersection of State Highway 6 and Murphy Rd., west of the new Lowe's building.

Backg	round information attached as follows:
	Cover Memo
	Ordinance
	Changes Marked
	Site Pictures
	Ortho



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 9a Lowe's of Missouri City and Outparcels PD Amendment

Prepared by: Jennifer Thomas, AICP, Planner II

Submitted by: Ornita Green, MPA, Director of Planning

SYNOPSIS

This is the second and final reading for a request by Brendan McEntee of McEntee Engineering and Design, Inc. to amend Ordinance O-08-20 pertaining to PD, Planned Development District #70 to add an approximate 1.54 acre tract of land into the overall PD development and to allow for deviations from the City's Zoning Ordinance, including architectural design standards for the outparcel tracts.

The subject site is located northeast of the intersection of State Highway 6 and Murphy Rd., west of the new Lowe's building.

BACKGROUND

SDI Missouri City Holdings, owners of the outparcel tracts which will front Murphy RD (FM 1092) and State Hwy 6, adjacent to the future Lowe's of Missouri City, recently acquired an approximate 1.54 acre tract of land from the State of Texas. This proposed PD amendment to Ordinance O-08-20 is seeking to add this tract of land into the overall development to allow for uniformity. In addition, this amendment is a request to apply the same architectural design standards, which are currently permitted for the Lowe's building design, to the commercial outparcel tracts as well.

City Council approved this ordinance on the first reading with no changes. However as a result of Council's discussion and public comments, staff has made modifications to Section 4.H. – Ingress and Egress of the proposed Ordinance. These modifications were made to clarify that the existing regulations do not apply to commercial vehicles accessing the Lowe's site during the construction period currently underway. In addition, staff has removed Appendix D, the access driveway plan, to ensure that there is no discrepancy in the regulations previously approved for driveway configuration.

STAFF'S RECOMMENDATION

Approve.

Bill Atkinson

Assistant City Manager

ORDINANCE NO. O-09-

AN ORDINANCE OF THE CITY OF MISSOURI CITY, TEXAS, REGULATIONS IN PD PLANNED DEVELOPMENT AMENDING DISTRICT NO. 70, CONSISTING OF A 22.54 ACRE TRACT OF LAND: CHANGING THE ZONING CLASSIFICATION OF A 1.54 ACRE TRACT OF LAND FROM LC-3 TO PD PLANNED DEVELOPMENT DISTRICT NO. 70: ADDING SUCH 1.54 ACRE TRACT OF LAND TO PD PLANNED DEVELOPMENT DISTRICT NO. 70; DESCRIBING THE COMBINED TOTAL OF 24.08 ACRES OF LAND: REGULATING AND RESTRICTING THE USE, SIZE, HEIGHT AND DENSITY OF BUILDINGS, THE SIZE OF YARDS AND TYPE OF USE WITHIN PD PLANNED DEVELOPMENT DISTRICT: REFERENCING Α SITE DEVELOPMENT APPLICABLE TO SAID DISTRICT; PROVIDING FOR CERTAIN CONSTRUCTION ACCORDING TO SAID PLAN: AMENDING THE ZONING DISTRICT MAP OF THE CITY AS ADOPTED BY ORDINANCE NO. O-81-01 ADOPTED ON JANUARY 19, 1981, AS AMENDED; REPEALING ORDINANCE NO. O-08-20 ADOPTED ON MAY 5, 2008; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

* * * *

WHEREAS, Lowe's Home Centers, Inc. and SDI Missouri City Holdings, LLC are the owners of a 22.54 acre tract of land and SDI Missouri City Holdings, LLC is the owner of a 1.54 acre tract of land situated within the corporate limits of the City of Missouri City, Texas; and

WHEREAS, of the total 24.08 acres of land, 22.54 acres presently have a zoning classification of PD, Planned Development District No. 70 under Ordinance No. O-08-20 adopted on May 5, 2008, and 1.54 acres presently have a zoning classification of LC-3 Retail District, under Ordinance No. O-81-01, adopted on January 19, 1981, the City of Missouri City Zoning Ordinance, as amended; and

WHEREAS, the owners' agent, Brendan McEntee, of McEntee Engineering and Design, Inc., has made application, on behalf of the owners, to the City of Missouri City to add the 1.54 acre tract of land to PD, Planned Development District No. 70 and to make amendments to PD Planned Development District No. 70, as authorized by the City of Missouri City Zoning Ordinance; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Missouri City have each conducted, in the time and manner and after the notice required by law and the City of Missouri City Zoning Ordinance, a public hearing on such requested amendments to PD Planned Development District No. 70; and

WHEREAS, the Planning and Zoning Commission has recommended and the City Council now deems it appropriate to grant such requested amendments; now therefore.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS:

<u>Section 1</u>. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

<u>Section 2</u>. As required by law, City Council conducted the public hearing on the request to amend PD, Planned Development District No. 70, and closed the public hearing prior to final adoption of this Ordinance.

Section 3. Presently, of the total 24.08 acres of land, 22.54 acres have a zoning classification of PD, Planned Development District No. 70 and 1.54 acres have a zoning classification of LC-3 Retail District. The zoning classification of said 1.54 acres of land is hereby changed from LC-3 Retail District to PD Planned Development District No. 70. The combined total 24.08 acres of land are more fully described in the legal description, Exhibit "A," attached hereto and made a part hereof for all purposes.

<u>Section 4</u>. PD Planned Development District No. 70 shall be and is conditioned upon compliance with to the following regulations and restrictions:

- **A. Purpose.** PD Planned Development District No. 70 is presently being improved with new construction which will include a Lowe's Home Improvement store and additional retail buildings. Improvements to the site will be designed to enhance the overall urban design of the surrounding area.
- **B. Use Regulations.** No building, structure, or land shall be used and no building or structure shall be hereafter erected, reconstructed, altered or enlarged except as provided in this Ordinance.

The following uses shall be permitted:

- 1. LC-3, Retail District uses.
- **C. Height and Area Regulations.** The height and area regulations for LC-3, Retail District, contained in Section 7.12, of the City of Missouri City Zoning Ordinance shall apply.
- **D. Architecture and Building Regulations.** Except as set forth herein, all buildings and structures shall comply with Section 7A, Architectural Design Standards of the City of Missouri City Zoning Ordinance. All buildings and structures are required to meet the building regulations for LC-3, Retail District, contained in Section 7.12 of the City of Missouri City Zoning

Ordinance. Additionally, any use of temporary buildings, other than for construction trailers during construction, shall be prohibited.

- 1. "Glacier White Blend 50" or a comparable color as approved by the Director of Planning, may be used as a primary color for all buildings and structures within PD, Planned Development District No. 70 as indicated in Exhibit "B."
- 2. "Lowe's Blue," or a comparable color as approved by the Director of Planning, may be used on visible, standing seam metal roofing as indicated in Exhibit "B" for the primary Lowe's Home Improvement building only.
- 3. "Lowe's Blue" and "Lowe's Red," or comparable colors as approved by the Director of Planning, are permitted as additional accent colors as indicated in Exhibit "B" for the primary Lowe's Home Improvement building only.
- **E. Lighting.** Lighting shall comply with the requirements of the City of Missouri City Code of Ordinances.
- **F. Trash Disposal, Refuse and Service Areas.** Trash disposal, refuse and service areas shall be located to the rear or side of buildings. Dumpsters and trash disposal areas shall be screened by a masonry enclosure, a minimum of eight (8) feet in height, constructed of the primary material approved for the exterior of the principal building. Gates for such enclosures within the development shall be opaque and shall consist of metal, the color of which shall match the surrounding predominant color or an approved trim color.
- **G. Landscaping, Screening and Buffering.** Except as set forth herein, the requirements of Section 11, Landscaping, of the City of Missouri City Zoning Ordinance shall apply.
 - 1. Landscaping, including the distribution of planting islands, may be installed as indicated in Exhibit "B."
 - 2. A minimum twenty (20) foot high black tubular fence with black vinyl coated fabric shall be installed around the perimeter of the garden center area as indicated in Exhibit "B." A minimum fifteen (15) foot high black tubular fence with black vinyl coated fabric shall be installed around the rear staging area as indicated in Exhibit "B."
- H. Ingress and Egress. All driveways and off-street parking areas shall comply with the City of Missouri City Infrastructure Code. Ingress to the PD, Planned Development District No. 70 by commercial motor vehicles as defined by Texas Transportation Code, Section 522.003(5), as amended, shall be from Murphy Road (FM 1092), State Highway 6, and the access drive to Hampton Drive located closer to Murphy Road (FM 1092). The access drive to

Hampton Drive located closer to Murphy Road (FM 1092) shall be configured to allow ingress only to the PD, Planned Development District No. 70. Egress from the PD, Planned Development District No. 70 by commercial motor vehicles shall only be to Murphy Road (FM 1092) and State Highway 6. Ingress to and egress from the PD, Planned Development District No. 70 by such commercial motor vehicles from any other access point is expressly prohibited. The other access drive to Hampton Drive and the access drive to Glenn Lakes Lane shall be configured to prevent access and use by such commercial motor vehicles. This section will become effective upon the City of Missouri City granting of a certificate of occupancy for the primary Lowe's Home Improvement building.

- **I. Parking Regulations.** The requirements of Section 12, Parking Regulations, of the City of Missouri City Zoning Ordinance shall apply.
- J. Signage. Except as set forth herein, signage shall meet the requirements of Section 13, Sign Regulations, of the City of Missouri City Zoning Ordinance for LC-3, Retail Districts.
 - 1. A ten foot (10') sign maintenance easement shall be dedicated to the City adjacent to the existing City monument sign at the corner of State Highway 6 and Murphy Road during the platting process.
 - 2. Two seventy square-foot, single-tenant signs for the Lowe's Home Center may be erected, one on Reserve A (on-premise) and one on Reserve E (off-premise), each adjacent to the access drive as depicted in the "Lowe's at Missouri City" recorded plat attached hereto as a portion of Exhibit "A." The Lowe's Home Center Reserve E (off-premise), single-tenant sign shall be in addition to the on-premise, single-tenant signs which are otherwise allowed for each tenant operating within that respective reserve.
- **K. Fence Regulations.** The requirements of Section 14, Fence Regulations, for LC-3, Retail Districts, shall apply.
- **L. Outdoor Sales, Display and Storage.** Except as set forth herein, the requirements of Section 7.12, LC-3, Retail Districts, of the City of Missouri City Zoning Ordinance shall apply.
 - 1. Outside display and storage shall be permitted as indicated in Exhibit "C," and made a part hereof. Additionally, outside display and storage shall be permitted in the areas along the linear frontage of the primary Lowe's Home Improvement building and garden center, provided that such areas do not exceed forty percent (40%) of the width of the area between the wall of the building and the loading zone, as depicted in the outdoor storage and display plan, attached hereto as Exhibit "C," and that a continuous minimum six (6) foot unobstructed pedestrian

- pathway is maintained, except that display and storage shall not be permitted between the columns of the Lowe's Home Improvement customer loading canopy.
- 2. A minimum four foot (4') evergreen hedge is required in the planting island around the utility building display area as indicated in Exhibit "B."
- 3. The outside display and storage area located within the parking area outside the Lowe's Home Improvement garden center may be used up to two times each calendar year for a period of time not to exceed forty-five (45) days for each period.
- **M. Sidewalks.** Sidewalks shall comply with the applicable provisions of the Missouri City Infrastructure Code.
- **N. Sound.** Sound emanating from PD Planned Development District No. 70 shall comply with the City of Missouri City Code of Ordinances. Additionally, the amplification of sound to the outside buildings shall be prohibited.
- **O. Utilities.** The provision and construction of utilities shall comply with the City of Missouri City Infrastructure Code.
- **P. Construction Activity.** Construction shall be permitted only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
- **Q. Development Schedule.** This ordinance shall expire on the fifth anniversary of the date the application for this planned development was filed, provided no progress has been made towards completion of this project.

<u>Section 5</u>. The Zoning District Map of the City of Missouri City shall be revised and amended to show the zoning classification of said 24.08 acre tract of land as provided in Section 3 hereof, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of this change.

<u>Section 6</u>. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Missouri City, save and except the change in zoning classification of the 24.08 acres of land described in Section 3 hereof and the imposition of the findings, regulations, restrictions and conditions applicable to PD Planned Development District No. 70 contained herein.

<u>Section 7</u>. Ordinance Number O-08-20, adopted by the City Council of the City of Missouri City on May 5, 2008, is hereby repealed.

<u>Section 8</u>. Penalty. Any person, firm, partnership, association, corporation, company, or organization of any kind who or which violates any of the provisions of this zoning ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed Five Hundred Dollars (\$500.00). Each day during which said violation shall exist or occur shall constitute a separate

offense. The owner or owners of any property or of premises where any violation of this zoning ordinance shall occur, and any agent, contractor, builder, architect, person, or corporation who shall assist in the commission of such offense shall be guilty of a separate offense unless otherwise prohibited by law and, upon conviction thereof, shall be punished as above provided.

<u>Section 9</u>. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

PASSED and APPROVED on first reading this 6th day of April, 2009.

PASSED, APPROVED and ADOPTED on second and final reading this ______
day of ______, 2009.

Allen Owen, Mayor

ATTEST: APPROVED AS TO FORM:

Patrice Fogarty, City Secretary Caroline Kelley, City Attorney

Exhibit A Page 1 of 3

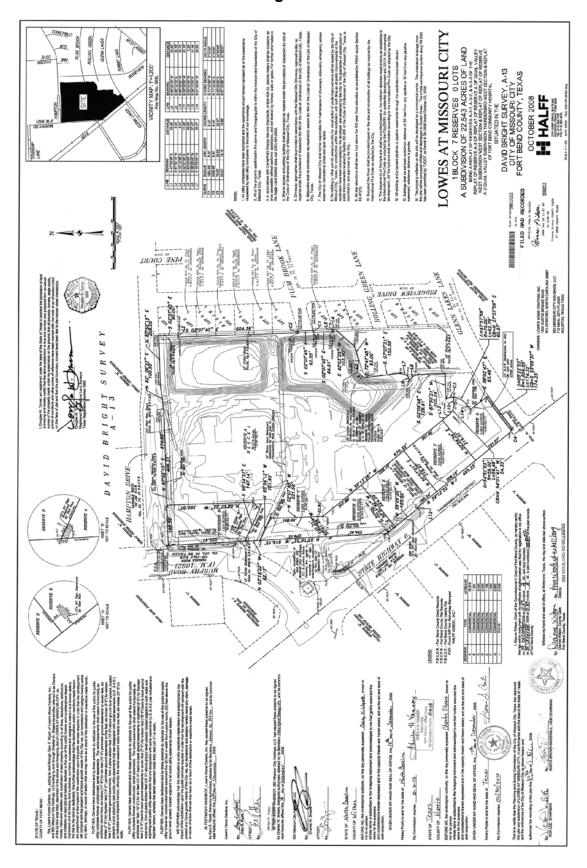


Exhibit A Page 2 of 3

Revised September, 2008 March, 2008 Tract 1 Page 1 of 4

EXHIBIT	
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County: Fort Bend Highway: SH 6

Project Limits: From Lexington Avenue to FM 1092 – Various Parcels

Account No.: 8012-02-005 ROW CSJ: 0192-01-057

Property Description For Tract 1

BEING a 1.541 acre (67,133 square feet) tract of land in the W. Stafford Survey, Abstract Number 89 and being a portion of Farm to Market Road (FM) 1092 (Murphy Road) (140.00 feet wide) as described in deed to the State of Texas recorded in Volume 1071, Page 631 of the Fort Bend County Deed Records and being a portion of a called 2.472 acre tract of land described in deed to the State of Texas recorded in Volume 2241, Page 471 of the Fort Bend County Deed Records, said 1.541 acres (67,133 square feet) being more particularly described by metes and bounds as follows with bearings based on the Texas Coordinate System of 1983, South Central Zone, 2001 adjustment:

COMMENCING at a TxDOT monument with a brass disk found at the intersection of the east right-of-way line of said FM 1092 and the south right-of-way line of Hampton Drive (a variable width right-of-way) described in Volume 10, Page 15 of the Fort Bend County Plat Records and being the northwest corner of that certain called 19.971 acre tract of land described in deed to SDI Missouri City Holdings, LLC recorded under Fort Bend County Clerk's File Number 2008063069, thence as follows;

With the common line between said 19.971 acre tract and said FM 1092, South 03° 18' 52" East, a distance of 139.45 feet to a 5/8 inch iron rod with plastic cap stamped "HALFF ASSOC. INC." set for the north corner and POINT OF BEGINNING of the herein described parcel and having coordinates X= 3,061,087.35, Y= 13,771,593.18;

1. THENCE, continuing with the common line between said 19.971 acre tract and said FM 1092, South 03° 18' 52" East, at a distance of 180.96 feet pass a 5/8 inch iron rod with plastic cap stamped "HALFF ASSOC. INC." found at the most westerly northwest corner of a called 16.574 acre tract of land described in deed to Lowe's Home Centers, Inc. recorded under Fort Bend County Clerk's File Number 2008063075, at a distance of 243.13 feet pass a 5/8 inch iron rod with plastic cap stamped "HALFF ASSOC. INC." found at the most westerly southwest corner of a said 16.574 acre tract, and continuing, in all, a distance of 767.95 feet to a 5/8 inch iron rod with plastic cap stamped "HALFF ASSOC. INC." set for the south corner of the herein described tract and being in the northeast right-of-way line of State Highway (SH) 6 (a variable width right-of-way) as described in deed recorded under Fort Bend County Clerk's File Number 9232235;

Exhibit A Page 3 of 3

Revised September, 2008 March, 2008 Tract 1 Page 2 of 4

EXHIBI	T
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- THENCE, with the northeast right-of-way line of said SH 6, North 39° 12' 35" West, a
 distance of 316.39 feet to the south end of the right-of-way transition line between
 the northeast right-of-way line of said S.H. 6 and the proposed east right-of-way line
 of FM 1092;
- 3. THENCE, with said right-of-way transition line, North 03° 18' 52" West, a distance of 109.23 feet to a 5/8 inch iron rod with plastic cap stamped "HALFF ASSOC. INC." set at the north end of said right-of-way transition line and being in the proposed east right-of-way line of said FM 1092 at the beginning of a non-tangent curve to the left;
- 4. THENCE with the proposed right-of-way line of said FM 1092, along said curve to the left having a radius of 538.26 feet, a central angle of 48° 36' 48", a chord which bears North 21° 26' 00" East, 443.12 feet, and an arc distance of 456.69 feet to the POINT OF BEGINNING and containing 1.541 acres (67,133 square feet) of land.

I, Douglas W. Turner, a Registered Professional Land Surveyor, do hereby certify that the property description hereon and the accompanying plat represent an actual survey made on the ground under my supervision.

Douglas W. Turner

Registered Professional Land Surveyor

Texas Registration Number 3988



Exhibit B Page 2 of 2



PLANT LIST

SYMBOL	QUAN.	DESCRIPTION
(D)	16	QUERCUS VIRGINIANA LIVE OAK 3" CAL MIN 10" HT., 6" SPREAD
O	10	TAXODIUM DISTICHUM BALD CYPRESS 3" CAL. MIN 10" HT., 6" SPREAD
0	7	QUERCUS PHELLOS WILLOW OAK 3" CAL. MIN 10" HT., 6" SPREAD
0	6	QUERCUS SHUMARDII RED DAK 3" CAL MIN 10" HT., 6" SPREAD
88	7	ULMUS AMERICANA AMERICAN ELM 3° CAL MIN 10' HT., 6' SPREAD
	16	LAGERSTROEMIA INDICA "NATCHEZ" CRAPE MYRTLE 3" CAL. MIN 8" HT, 4" SPREAD
*	26	ILEX VOMITORIA YAUPON HOLLY 3° CAL. MIN 8' HT, 4' SPREAD
0	26	CERCIS CANADENSIS REDBUD 3° CAL. MIN 8' HT, 4' SPREAD

\odot	15	PRUNUS CAROLINIANA CHERRY LAUREL 24" BOX MIN 9" HT, 7" SPREAD
0	49	RAPHIOLEPIS INDICA "CLARA" INDIAN HAWTHORNE 7 GAL 30" HT. MIN.
٨	120	ILEX VOMITORIA "NANA" DWARF YAUPON 7 GAL 30" HT. MIN.
⊕	155	MYRICA PUSILLA DWARF WAX MYRTLE 7 GAL 30" HT., 18" SPREAD MIN.
	233	LIRIOPE MUSCARI "EVERGREEN GIANT" LIRIOPE 1 GAL 8" HT., 12" SPREAD MIN.
	194	LANTANA X HYBRIDA "NEW GOLD" LANTANA 1 GAL 8" HT., 12" SPREAD MIN.
	43	STIPA TENUISSIMA MEXICAN FEATHER GRASS 1 GAL 8" HT., 12" SPREAD MIN.

Exhibit C Page 1 of 2

Outdoor Storage and Display Plan

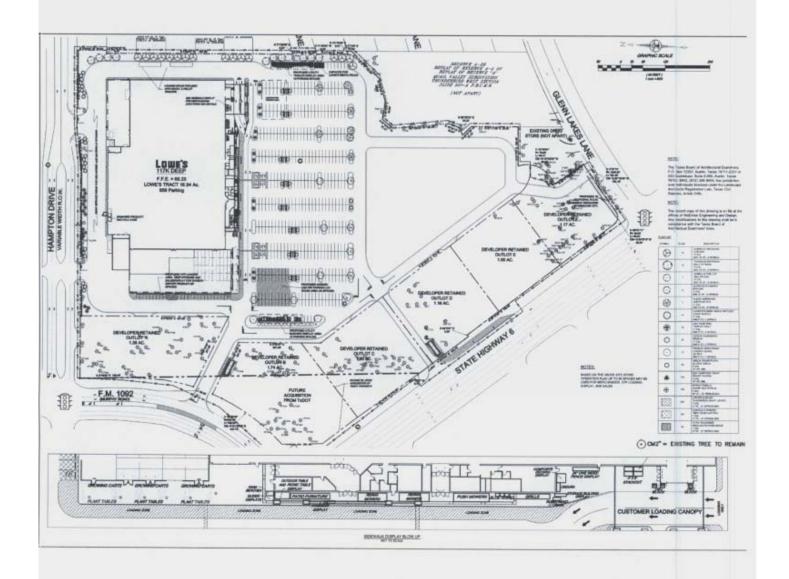


Exhibit C Page 2 of 2

	Square Feet	Equivalent Number of Parking Spaces	
Outside D	isplay Along Bldg. Fronta		
2" One-sided Fence Display:	82 s.f.		
Rubbermaid Storage; Storage Bldg. Display; Ondura; Composite Decking Display:	156 s.f.		
Grills:	205 s.f.		
Blue rhinos:	201 s.f.		
Push Mowers:	288 s.f.		
Riding Mowers:	411 s.f.	N/A	
Outdoor Table, Picnic Table Display; Patio Furniture; Hammock Display; Park Benches; Glider Displays:	631 s.f.		
Growing Carts; Plant Tables:	2,551 s.f.		
Total Outside Display adjacent to Bldg:	4,525 s.f.		
Outside	Display in Parking Areas		
Utility Trailer:	2,106 s.f.	13 spaces	
Rent-a-Truck:	486 s.f.	3 spaces	
Proposed Utility Bldg. Display Area:	1,944 s.f.	12 spaces	
Proposed Garden Center Parking Lot Sales Area:	5,994 s.f.	37 spaces	
Total Outside Display in Parking Area:	10,530 s.f.	65 spaces	

ORDINANCE NO. 0-09-

AN ORDINANCE OF THE CITY OF MISSOURI CITY, TEXAS, REGULATIONS IN PD PLANNED DEVELOPMENT AMENDING DISTRICT NO. 70, CONSISTING OF A 22.54 ACRE TRACT OF LAND: CHANGING THE ZONING CLASSIFICATION OF A 1.54 ACRE TRACT OF LAND FROM LC-3 TO PD PLANNED DEVELOPMENT DISTRICT NO. 70: ADDING SUCH 1.54 ACRE TRACT OF LAND TO PD PLANNED DEVELOPMENT DISTRICT NO. 70; DESCRIBING THE COMBINED TOTAL OF 24.08 ACRES OF LAND; REGULATING AND RESTRICTING THE USE. SIZE. HEIGHT AND DENSITY OF BUILDINGS. THE SIZE OF YARDS AND TYPE OF USE WITHIN PD PLANNED DEVELOPMENT REFERENCING SITE DISTRICT: Α DEVELOPMENT APPLICABLE TO SAID DISTRICT; PROVIDING FOR CERTAIN CONSTRUCTION ACCORDING TO SAID PLAN: AMENDING THE ZONING DISTRICT MAP OF THE CITY AS ADOPTED BY ORDINANCE NO. O-81-01 ADOPTED ON JANUARY 19, 1981, AS AMENDED: REPEALING ORDINANCE NO. O-08-20 ADOPTED ON MAY 5, 2008; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

* * * *

WHEREAS, Lowe's Home Centers, Inc. and SDI Missouri City Holdings, LLC are the owners of a 22.54 acre tract of land and SDI Missouri City Holdings, LLC is the owner of a 1.54 acre tract of land situated within the corporate limits of the City of Missouri City, Texas; and

WHEREAS, of the total 24.08 acres of land, 22.54 acres presently have a zoning classification of PD, Planned Development District No. 70 under Ordinance No. O-08-20 adopted on May 5, 2008, and 1.54 acres presently have a zoning classification of LC-3 Retail District, under Ordinance No. O-81-01, adopted on January 19, 1981, the City of Missouri City Zoning Ordinance, as amended; and

WHEREAS, the owners' agent, Brendan McEntee, of McEntee Engineering and Design, Inc., has made application, on behalf of the owners, to the City of Missouri City to add the 1.54 acre tract of land to PD, Planned Development District No. 70 and to make amendments to PD Planned Development District No. 70, as authorized by the City of Missouri City Zoning Ordinance; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Missouri City have each conducted, in the time and manner and after the notice

required by law and the City of Missouri City Zoning Ordinance, a public hearing on such requested amendments to PD Planned Development District No. 70; and

WHEREAS, the Planning and Zoning Commission has recommended and the City Council now deems it appropriate to grant such requested amendments; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS:

<u>Section 1</u>. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

<u>Section 2</u>. As required by law, City Council conducted the public hearing on the request to amend PD, Planned Development District No. 70, and closed the public hearing prior to final adoption of this Ordinance.

<u>Section 3</u>. Presently, of the total 24.08 acres of land, 22.54 acres have a zoning classification of PD, Planned Development District No. 70 and 1.54 acres have a zoning classification of LC-3 Retail District. The zoning classification of said 1.54 acres of land is hereby changed from LC-3 Retail District to PD Planned Development District No. 70. The combined total 24.08 acres of land are more fully described in the legal description, Exhibit "A," attached hereto and made a part hereof for all purposes.

<u>Section 4</u>. PD Planned Development District No. 70 shall be and is conditioned upon compliance with to the following regulations and restrictions:

- **A. Purpose.** PD Planned Development District No. 70 is presently being improved with new construction which will include a Lowe's Home Improvement store and additional retail buildings. Improvements to the site will be designed to enhance the overall urban design of the surrounding area.
- **B. Use Regulations.** No building, structure, or land shall be used and no building or structure shall be hereafter erected, reconstructed, altered or enlarged except as provided in this Ordinance.

The following uses shall be permitted:

- 1. LC-3, Retail District uses.
- **C. Height and Area Regulations.** The height and area regulations for LC-3, Retail District, contained in Section 7.12, of the City of Missouri City Zoning Ordinance shall apply.
- **D. Architecture and Building Regulations.** Except as set forth herein, all buildings and structures shall comply with Section 7A, Architectural Design

Standards of the City of Missouri City Zoning Ordinance. All buildings and structures are required to meet the building regulations for LC-3, Retail District, contained in Section 7.12 of the City of Missouri City Zoning Ordinance. Additionally, any use of temporary buildings, other than for construction trailers during construction, shall be prohibited.

- 1. "Glacier White Blend 50" or a comparable color as approved by the Director of Planning, may be used as a primary color for all buildings and structures within PD, Planned Development District No. 70 as indicated in Exhibit "B."
- 2. "Lowe's Blue," or a comparable color as approved by the Director of Planning, may be used on visible, standing seam metal roofing as indicated in Exhibit "B" for the primary Lowe's Home Improvement building only.
- 3. "Lowe's Blue" and "Lowe's Red," or comparable colors as approved by the Director of Planning, are permitted as additional accent colors as indicated in Exhibit "B" for the primary Lowe's Home Improvement building only.
- **E. Lighting.** Lighting shall comply with the requirements of the City of Missouri City Code of Ordinances.
- **F. Trash Disposal, Refuse and Service Areas.** Trash disposal, refuse and service areas shall be located to the rear or side of buildings. Dumpsters and trash disposal areas shall be screened by a masonry enclosure, a minimum of eight (8) feet in height, constructed of the primary material approved for the exterior of the principal building. Gates for such enclosures within the development shall be opaque and shall consist of metal, the color of which shall match the surrounding predominant color or an approved trim color.
- **G. Landscaping, Screening and Buffering.** Except as set forth herein, the requirements of Section 11, Landscaping, of the City of Missouri City Zoning Ordinance shall apply.
 - 1. Landscaping, including the distribution of planting islands, may be installed as indicated in Exhibit "B."
 - 2. A minimum twenty (20) foot high black tubular fence with black vinyl coated fabric shall be installed around the perimeter of the garden center area as indicated in Exhibit "B." A minimum fifteen (15) foot high black tubular fence with black vinyl coated fabric shall be installed around the rear staging area as indicated in Exhibit "B."
- **H. Ingress and Egress.** All driveways and off-street parking areas shall comply with the City of Missouri City Infrastructure Code. Ingress to the PD, Planned Development District No. 70 by commercial motor vehicles as defined by

Texas Transportation Code, Section 522.003(5), as amended, shall be from Murphy Road (FM 1092) and, State Highway 6; however, 6, and the access drive to Hampton Drive located closer to Murphy Road (FM 1092) may. The access drive to Hampton Drive located closer to Murphy Road (FM 1092) shall be configured to allow ingress only to the PD, Planned Development District No. 70. Egress from the PD, Planned Development District No. 70 by commercial motor vehicles shall only be to Murphy Road (FM 1092) and State Highway 6. Ingress to and egress from the PD, Planned Development District No. 70 by such commercial motor vehicles from any other access point is expressly prohibited. The other access drive to Hampton Drive and the access drive to Glenn Lakes Lane shall be configured to prevent access and use by such commercial motor vehicles. Ingress to and egress from the PD, Planned Development District No. 70 shall be as described above and configured as depicted in the access driveway plan attached hereto as Exhibit "D." This section will become effective upon the City of Missouri City granting of a certificate of occupancy for the primary Lowe's Home Improvement building.

- **I. Parking Regulations.** The requirements of Section 12, Parking Regulations, of the City of Missouri City Zoning Ordinance shall apply.
- J. Signage. Except as set forth herein, signage shall meet the requirements of Section 13, Sign Regulations, of the City of Missouri City Zoning Ordinance for LC-3, Retail Districts.
 - 1. A ten foot (10') sign maintenance easement shall be dedicated to the City adjacent to the existing City monument sign at the corner of State Highway 6 and Murphy Road during the platting process.
 - 2. Two seventy square-foot, single-tenant signs for the Lowe's Home Center may be erected, one on Reserve A (on-premise) and one on Reserve E (off-premise), each adjacent to the access drive as depicted in the "Lowe's at Missouri City" recorded plat attached hereto as a portion of Exhibit "A." The Lowe's Home Center Reserve E (off-premise), single-tenant sign shall be in addition to the on-premise, single-tenant signs which are otherwise allowed for each tenant operating within that respective reserve.
- **K. Fence Regulations.** The requirements of Section 14, Fence Regulations, for LC-3, Retail Districts, shall apply.
- L. Outdoor Sales, Display and Storage. Except as set forth herein, the requirements of Section 7.12, LC-3, Retail Districts, of the City of Missouri City Zoning Ordinance shall apply.
 - 1. Outside display and storage shall be permitted as indicated in Exhibit "C," and made a part hereof. Additionally, outside display and storage

shall be permitted in the areas along the linear frontage of the primary Lowe's Home Improvement building and garden center, provided that such areas do not exceed forty percent (40%) of the width of the area between the wall of the building and the loading zone, as depicted in the outdoor storage and display plan, attached hereto as Exhibit "C," and that a continuous minimum six (6) foot unobstructed pedestrian pathway is maintained, except that display and storage shall not be permitted between the columns of the Lowe's Home Improvement customer loading canopy.

- 2. A minimum four foot (4') evergreen hedge is required in the planting island around the utility building display area as indicated in Exhibit "B."
- 3. The outside display and storage area located within the parking area outside the Lowe's Home Improvement garden center may be used up to two times each calendar year for a period of time not to exceed forty-five (45) days for each period.
- **M. Sidewalks.** Sidewalks shall comply with the applicable provisions of the Missouri City Infrastructure Code.
- **N. Sound.** Sound emanating from PD Planned Development District No. 70 shall comply with the City of Missouri City Code of Ordinances. Additionally, the amplification of sound to the outside buildings shall be prohibited.
- **O. Utilities.** The provision and construction of utilities shall comply with the City of Missouri City Infrastructure Code.
- **P. Construction Activity.** Construction shall be permitted only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
- **Q. Development Schedule.** This ordinance shall expire on the fifth anniversary of the date the application for this planned development was filed, provided no progress has been made towards completion of this project.

<u>Section 5</u>. The Zoning District Map of the City of Missouri City shall be revised and amended to show the zoning classification of said 24.08 acre tract of land as provided in Section 3 hereof, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of this change.

<u>Section 6</u>. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Missouri City, save and except the change in zoning classification of the 24.08 acres of land described in Section 3 hereof and the imposition of the findings, regulations, restrictions and conditions applicable to PD Planned Development District No. 70 contained herein.

<u>Section 7</u>. Ordinance Number O-08-20, adopted by the City Council of the City of Missouri City on May 5, 2008, is hereby repealed.

Section 8. Penalty. Any person, firm, partnership, association, corporation, company, or organization of any kind who or which violates any of the provisions of this zoning ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed Five Hundred Dollars (\$500.00). Each day during which said violation shall exist or occur shall constitute a separate offense. The owner or owners of any property or of premises where any violation of this zoning ordinance shall occur, and any agent, contractor, builder, architect, person, or corporation who shall assist in the commission of such offense shall be guilty of a separate offense unless otherwise prohibited by law and, upon conviction thereof, shall be punished as above provided.

<u>Section 9</u>. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Document comparison done by Workshare Professional on Thursday, April 09, 2009 2:06:54 PM

Input:	
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	amendment original v1.doc
Document 2	file://W:/LEGALPC/Zoning/changes marked/Lowe's
	amendment revised v1.doc
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:		
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Moved from		0
Moved to		0
Style change		0
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Total changes		14

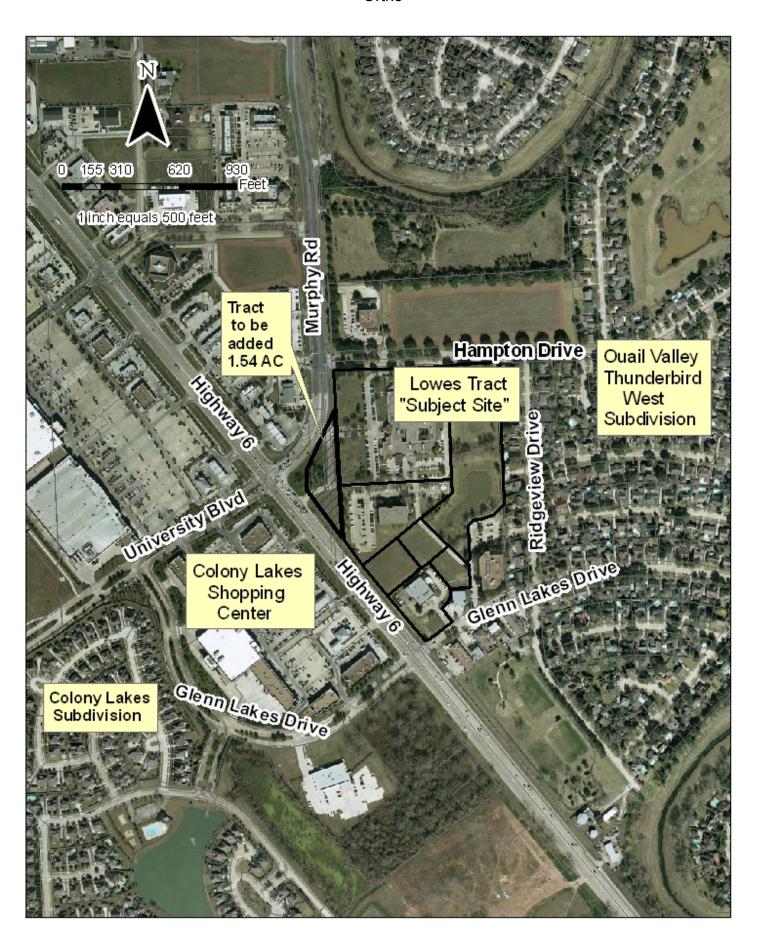
Lowe's of Missouri City PD Planned Development Amendment Application













Council Agenda Item April 20, 2009

10. CONSIDERATION OF ORDINANCES

(a) Consider an ordinance of the City Council of the City of Missouri City, Texas, declaring the candidate for Councilmember District B, Cynthia Lenton-Gary, and the candidate for Councilmember District D, Jon Brett Kolaja, unopposed; declaring Cynthia Lenton-Gary, candidate for Councilmember District B, and Jon Brett Kolaja, candidate for Councilmember District D, elected; cancelling the election for singlemember Districts B and D; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and providing for severability; and to consider the ordinance on the first of two readings.

Cover Memo

Ordinance



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 10a Ordinance Declaring District B and District D Councilmember Unopposed

Submitted by: Patrice Fogarty, City Secretary

SYNOPSIS

This is second and final reading of an ordinance declaring the candidates for District B and District D unopposed; declaring Cynthia Lenton-Gary, candidate for Councilmember District B, and declaring Jon Brett Kolaja, candidate for Councilmember District D, elected to that office; and cancelling the District B and District D elections.

BACKGROUND

On February 16, 2009, the City of Missouri City called a general election for May 9, 2009, for the purpose of electing district councilmembers. The incumbents for District B, Cynthia Lenton-Gary, and District D, Jon Brett Kolaja, filed an application for a place on the ballot. No other candidate filed for District B and District D by the deadline, nor were there any declared write-in candidates. Pursuant to Section 2.052 of the Texas Election Code, the City Secretary has certified these candidates as unopposed and has attached a copy of this certification to the Ordinance as Exhibit A.

FISCAL ANALYSIS

Funds have been budgeted for the general election. Districts A and C elections are on-going. There will be a small savings by cancelling the District B and District D elections.

STAFF'S RECOMMENDATION

Declare Cynthia Lenton-Gary, the unopposed candidate for District B, and Jon Brett Kolaja, the unopposed candidate for District D, duly elected to the office, and cancel the Districts B and D elections.

Frank Simpson City Manager

ORDINANCE NO. O-09-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MISSOURI CITY. TEXAS, DECLARING THE CANDIDATE FOR COUNCILMEMBER DISTRICT CYNTHIA LENTON-GARY, AND THE CANDIDATE COUNCILMEMBER DISTRICT D, JON BRETT KOLAJA, UNOPPOSED; DECLARING **CYNTHIA** LENTON-GARY, CANDIDATE **FOR** COUNCILMEMBER DISTRICT B. AND JON BRETT KOLAJA. CANDIDATE FOR COUNCILMEMBER DISTRICT D, ELECTED; CANCELLING THE ELECTION FOR SINGLE-MEMBER DISTRICTS B AND D; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

* * * * * * * *

WHEREAS, pursuant to City of Missouri City, Texas, Ordinance No. O-09-06, adopted on February 16, 2009, a general municipal officers' election was ordered to be held on May 9, 2009, for the purpose of electing four officials of the City, to wit: Councilmembers for Districts A, B, C, and D; and

WHEREAS, pursuant to said Ordinance No. O-09-06 and Sections 143.007 and 146.054 of the Texas Election Code, the deadline for filing applications for a place on the ballot and declaration of write-in candidacy for the City's municipal officers election has expired; and

WHEREAS, the City Secretary, in accordance with Section 2.052, Texas Election Code, has certified to the City Council in writing that Cynthia Lenton-Gary is unopposed for election to the office of Councilmember District B; and Jon Brett Kolaja is unopposed for election to the office of Councilmember District D; and a copy of such Certification of Unopposed Candidates labeled Exhibit A is attached hereto and made a part hereof; and

WHEREAS, the City Council hereby finds and determines that Cynthia Lenton-Gary and Jon Brett Kolaja, candidate for Districts B and D, respectively, whose names are to appear on the ballot in said election are unopposed; and no propositions and no opposed at-large elections are to appear on the ballot for such election; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS:

<u>Section 1</u>. The facts and matters set forth in the preamble of this ordinance are hereby found to be true and correct.

Section 2. In accordance with Subsections 2.053(a) and (c), Texas Election Code, Cynthia Lenton-Gary and Jon Brett Kolaja are hereby declared duly elected to the respective offices shown and shall be issued a certificate of election in the same manner and at the same time as provided for a candidate elected at the election:

Cynthia Lenton-Gary – Councilmember District B

Jon Brett Kolaja – Councilmember District D

Section 3. Pursuant to Section 2.053(b), Texas Election Code, the general municipal officers' election heretofore called and ordered pursuant to City of Missouri City, Texas, Ordinance No. O-09-06, for the 9th day of May 2009, shall not be held in single-member Districts B and D and is hereby cancelled only for single-member Districts B and D; and the City Secretary is hereby directed to cause a copy of this ordinance to be posted on election day, same being May 9, 2009, at the polling places that would have been used in such election.

<u>Section 4</u>. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 5. In the event any clause, phrase, provision, sentence, or part of this ordinance or the application of same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there by one or more parts.

PASSED AND APPROVED on first reading this 6th day of April, 2009.

PASSED, APPROVED and ADOPTED on second and final reading this _____ day of April, 2009.

Allen Owen, Mayor

ATTEST:

APPROVED AS TO FORM:

Caroline Kelley, City Attorney

Exhibit A



CITY OF MISSOURI CITY OFFICE OF THE CITY SECRETARY

Patrice Fogarty, TRMC 1522 Texas Parkway Missouri City, Texas 77489 pfogarty@missouricitytx.gov Phone: 281.403.8500 www.missouricitytx.gov

CERTIFICATION OF UNOPPOSED CANDIDATES

I, Patrice Fogarty, hereby certify that I am the City Secretary of the City of Missouri City, Texas, and the authority responsible for having the official ballot prepared for the general municipal officers' election ordered for May 9, 2009. I further hereby certify, pursuant to Section 2.052, TEXAS ELECTION CODE, that the candidate for District B and District D is unopposed for election to that office in the May 9, 2009, election as follows:

Cynthia Lenton-Gary is unopposed for election to the office of Councilmember District B; and

Jon Brett Kolaja is unopposed for election to the office of Councilmember District D;

And that no candidate's name is to be placed on a list of declared write-in candidates for any position to appear on the ballot in the May 9, 2009, election.

I further hereby certify that there are no propositions and no opposed at-large elections to appear on the ballot in the May 9, 2009, election.

CITY

Dated this 16th day of March, 2009.

Patrice Fogarty, City

City of Missouri City, Texas



Council Agenda Item April 20, 2009

11. CONSIDERATION OF RESOLUTIONS

Resolution

(a) Consider a resolution of the City of Missouri City, Texas, adopting an **Identity Theft Prevention Program.**

Background information attached as follows:	
Cover Memo	



Council Agenda Item Cover Memo April 20, 2009

To: Mayor and City Council

Agenda Item: 11a Identity Theft Prevention Program

Submitted by: Edward G. Williams, Ph.D.

SYNOPSIS

The Fair and Accurate Credit Transaction Act of 2003 (FACTA) added new sections to the federal Fair Credit Reporting Act (FCRA, 15 U.S.C. 1681 et seq.) Its primary intent is to help consumers fight the growing number of identity theft crimes in the nation. FACTA includes limits on information sharing, accuracy, privacy, and new consumer rights to disclosure.

BACKGROUND

In October of 2004, The Federal Trade Commission issued its final rules under the Fair and Accurate Credit Transactions Act (FACTA). FACTA is an amendment to the Fair Credit Reporting Act (FCRA) thereby enabling identity theft victims to place "fraud alerts" on their credit files and work with creditors and credit bureaus to "block" information in their credit reports resulting from identity theft. FACTA also allows military personnel to place an alert on their credit file if deployed. It also allows consumers to request that a credit bureau truncate their Social Security number on credit reports to the consumers.

The City of Missouri City meets the definition of "creditor" per the act; therefore, working with the Finance and Legal Departments, the Department of Human Resources & Organizational Development will develop and implement measures to ensure compliance with this mandate.

FISCAL ANALYSIS

The City Manager, Finance Director, Legal, Public Works and HR/OD Departments anticipate no adverse fiscal impact from approving this resolution.

STAFF'S RECOMMENDATION

Approve the proposed resolution and authorize the City Manager to implement an Identity Theft Prevention Program for Utilities Services in the City of Missouri City.

Frank Simpson City Manager

RESOLUTION NO. R-09-____

A RESOLUTION OF THE CITY OF MISSOURI CITY, TEXAS, ADOPTING AN IDENTITY THEFT PREVENTION PROGRAM.

WHEREAS, on January 1, 2008, the Federal Trade Commission's Red Flags Rule pertaining to Identity Theft Prevention pursuant to Section 114 of the Fair and Accurate Credit Transaction Act of 2003 became effective; and

WHEREAS, a city that meets the definition of creditor, per the Red Flags Rule, must adopt an Identity Theft Prevention Program by May 1, 2009; and

WHEREAS, the City of Missouri City meets the definition of creditor per the Red Flags Rule based on providing municipal utility services to customers; and

WHEREAS, the City Council recognizes the importance of protecting personal information and the need to establish a program to protect such personal information via an Identity Theft Prevention Program and to come into compliance with federal law; now therefore.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS:

Section 1. The facts and recitals set forth in the preamble of this Resolution are hereby found to be true and correct and incorporated herein and made a part hereof.

<u>Section 2</u>. The City Council adopts the Identity Theft Prevention Program as set forth in Exhibit "A", attached hereto and made a part hereof.

PASSED, APPROVED and ADO	OPTED this day of, 2009
	Allen Owen, Mayor
ATTEST:	APPROVED AS TO FORM:
Patrice Fogarty, City Secretary	Caroline Kelley, City Attorney

CITY OF MISSOURI CITY IDENTITY THEFT PREVENTION PROGRAM

BACKGROUND & SCOPE

The City of Missouri City ("City") is committed to preventing identity theft for covered accounts through the implementation of an Identity Theft Prevention Program ("Program") pursuant to Section 114 of the Fair and Accurate Credit Transactions Act of 2003. This Program applies to City employees, contractors, consultants, temporary employees, service providers, and all personnel and entities affiliated with third parties who act as agents or representatives of the City.

PURPOSE

Implementing an Identity Theft Prevention Program enables the City to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. This Program protects customers, reduces the risks from identity fraud and minimizes potential damage to the City from fraudulent accounts. The Program will establish criteria for the City to:

- Identify relevant Red Flags for covered accounts and incorporate those Red Flags into the Program;
- Detect Red Flags that have been incorporated into the Program;
- Respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and
- Ensure the Program is updated periodically to reflect changes in risks to covered accounts and to the safety and soundness of the City from identity theft.

PROGRAM

A. DEFINITIONS

- Covered Account means an account that the City offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as utility accounts and any other account that the City offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the City from identity theft, including financial, operational, compliance, reputation, or litigation risks.
- 2. Red Flag means a pattern, practice, or specific activity that indicates the possible existence of identity theft.
- 3. Identifying information means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

4. Designated program representative means the employee who is responsible for implementing this Program.

B. IDENTIFICATION OF RELEVANT RED FLAGS

The City has identified the following Red Flags as potential indicators of fraud, and any time a Red Flag, or a situation closely resembling a Red Flag, comes to the attention of the City, the City shall investigate as appropriate.

- 1. Alerts, Notifications or Warnings from a Consumer Reporting Agency
 - a. A fraud or active duty alert is included with a consumer report;
 - b. A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report;
 - c. A consumer reporting agency provides a notice of address discrepancy; or
 - d. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:
 - A recent and significant increase in the volume of inquiries;
 - An unusual number of recently established credit relationships;
 - A material change in the use of credit, especially with respect to recently established credit relationships; or
 - An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

2. Suspicious Documents

- a. Documents provided for identification appear to have been altered or forged;
- b. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification:
- c. Information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification:
- d. Information on the identification is not consistent with readily accessible information that is on file with the City, such as a signature card or a recent check; or
- e. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.
- 3. Suspicious Identifying Information

- a. Identifying information provided is inconsistent with external information used by the City. For example:
 - The address does not match any address in the consumer report; or
- b. Identifying information provided by the customer is not consistent with other identifying information presented by the customer. For example:
 - There is a lack of correlation between the SSN range and date of birth.
- c. Identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the City. For example:
 - The address on an application is the same as the address provided on a fraudulent application; or
 - The phone number on an application is the same as the number provided on a fraudulent application.
- d. Identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the City. For example:
 - The address on an application is fictitious, a mail drop, or prison; or
 - The phone number is invalid, or is associated with a pager or answering service.
- e. The SSN provided is the same as that submitted by other persons opening an account or other customers;
- f. The address or telephone number provided is the same as the address or telephone number submitted by an unusually large number of other persons opening accounts or other customers;
- g. The person opening the covered account or the customer fails to provide all required identifying information on an application or in response to notification that the application is incomplete;
- h. Identifying information provided is not consistent with identifying information that is on file with the City; or
- i. If the City uses challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.
- 4. Unusual Use of, or Suspicious Activity Related to, the Covered Account
 - a. Shortly following the notice of a change of address for a covered account, the City receives a request for a change of authorized users on the account;
 - b. The customer fails to make the first payment or makes an initial payment but no subsequent payments;

- c. A covered account is used in a manner that is not consistent with established patterns of activity on the account. For example:
 - Nonpayment when there is no history of late or missed payments.
- d. A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors);
- e. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account;
- f. The City is notified that the customer is not receiving paper account statements;
- g. The City is notified of unauthorized charges or transactions in connection with a customer's covered account; or
- h. The City has a known breach of customer account information.
- 5. Notice from Customers, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection with Covered Accounts Held by City. The City is notified that the City has opened a fraudulent account for a person engaged in identity theft.

C. DETECTING RED FLAGS

- 1. City may require identifying information or other information about, and verify the identity of, a person opening a covered account.
- 2. City may verify the validity of address request changes.
- 3. City may take other appropriate actions as necessary.

D. RESPONDING APPROPRIATELY TO ANY RED FLAGS THAT ARE DETECTED TO PREVENT AND MITIGATE IDENTITY THEFT

Once potentially fraudulent activity is detected, it is essential to act quickly as a rapid and appropriate response can protect customers and the City from damages and loss.

- Once City employees, contractors, consultants, temporary employees, service
 providers, and all personnel and entities affiliated with third parties who act as
 agents or representatives of the City detect a potentially fraudulent activity, they
 shall notify the designated program representative for determination and
 disposition.
- 2. The designated program representative will complete additional authentication to determine whether the attempted transaction was fraudulent or authentic.

- 3. If the designated program representative determines that a transaction is fraudulent, he or she must take appropriate actions immediately. Actions may include:
 - Monitor a covered account for evidence of identity theft;
 - Contacting the customer;
 - Changing any passwords, security codes, or other security devices that permit access to a covered account;
 - Reopening a covered account with a new account number;
 - Not opening a new covered account;
 - Closing an existing covered account;
 - Not attempting to collect on a covered account or not turning account over for collection;
 - Notify and cooperate with appropriate law enforcement; or
 - Determine that no response is warranted under the particular circumstances.

E. ENSURING THE PROGRAM IS UPDATED PERIODICALLY TO REFLECT CHANGES IN RISKS TO COVERED ACCOUNTS AND TO THE SAFETY AND SOUNDNESS OF THE CITY FROM IDENTITY THEFT

- Annually, the designated program representative will review this Program to determine whether all aspects of the Program are up to date and applicable in the current environment. The City will base any changes in the Program on factors such as:
 - The experience of the City with identity theft;
 - Changes in the method of identity theft;
 - Changes in the methods to detect, prevent, and mitigate identity theft; and
 - Changes in the types of covered accounts that the City offers or maintains.
- 2. The designated program representative shall prepare an annual report to the City Manager or his designee on the City's compliance with the Program and applicable law. The report should address material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the City in addressing the risk of identity theft in connection with opening of covered accounts and with respect to existing covered accounts; service provider arraignments; significant incidents involving identity theft and the City's response; and recommendations for material changes to the Program.
- 3. Any recommended change to this Program will be presented to City Council for approval.

F. PROGRAM ADMINISTRATION

 The City Manager or his designee (an employee at senior level management) shall have oversight of the Program. The City Manager or his designee also shall assign an employee to implement the Program known as the designated program representative. 2. The City Manager or his designee shall review reports prepared by staff regarding compliance with this Program and applicable law.

G. STAFF TRAINING

- 1. The City will provide training for employees who manage covered accounts.
- 2. The designated program representative shall be responsible for all training.

H. OVERSIGHT OF SERVICE PROVIDER ARRANGEMENTS

- 1. Any service provider the City engages to perform an activity in connection with covered accounts must take the following steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft:
 - Service providers shall either have their own Identity Theft Prevention Program that complies with all applicable laws; or
 - Service providers may use the City Identity Theft Prevention Program.
- City may require by contract that service providers report Red Flags to the City and that service providers be responsible for taking steps to mitigate identity theft.

I. ENFORCEMENT

Any employee found to have violated this policy may be subject to disciplinary action, up to and including termination of employment.



Council Agenda Item April 20, 2009

12. RECEIVING OF REPORTS

13. CLOSED EXECUTIVE SESSION

The City Council may go into Executive Session regarding any item posted on the Agenda as authorized by Chapter 551 of the Texas Government Code. Notice is hereby given that the City Council will go into Executive Session in accordance with the following provisions of the Government Code:

Texas Government Code, Section 551.071 – Consultation with attorney to seek or receive legal advice regarding pending or contemplated litigation, a settlement offer, or on a matter which the duty of the attorney to the City under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act: contract with Urban Solutions Associations, LLC, dba USA Partners Sports Alliance.

- **14. CONVENE INTO OPEN SESSION –** *Take action, if necessary.*
- 15. ADJOURN